This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

3 3433 00603079 9

SEC

SEC
Smith

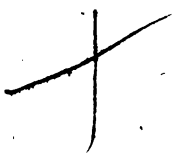
THE

NATURE AND INSTITUTION

OF

GOVERNMENT.

VOL. I.



THE

NATURE AND INSTITUTION

OF

GOVERNMENT;

CONTAINING

AN ACCOUNT OF THE

Feudal and Engliſh Policy.

By WILLIAM SMITH, M. D.

——Juvat integros accedere fonteis
Atque haurire—— Lucret.

WITHDRAWN

IN TWO VOLUMES.

VOLUME THE FIRST.

LONDON:
Printed for the AUTHOR;
And ſold by W. OWEN, near Temple-Bar.
MDCCLXXI.

L. R. T.
FXF.

THE NEW YORK
PUBLIC LIBRARY
2625178
R 1943 L

TO THE

READER.

I AM ſenſible that this treatiſe will, very likely, incur the diſpleaſure of many, as it contains ſome principles neither modern nor faſhionable; yet, though faſhion is a moſt powerful thing, to which the laws of God and man bow and obey, it has not ſo ſtrongly recommended itſelf to me as to obtain an intire conqueſt over me: for, with God's aſſiſtance, I ſhall always readily embrace the truth wherever I find it, and reſolutely walk where wiſdom and truth lead me, let the paths be never ſo unfrequented. I can honeſtly declare, that no vain-glorious humour of deſiring to be popular, which I never ſhall effect by the method I take, nor itch to

89X677

have my name in print, nor any deſign to create freſh uneaſineſs, was the occaſion of my entering upon this undertaking. I heartily bewail thoſe diſcontents, riots, and tumults, which ſo miſerably diſtract this nation, and threaten its utter ruin; and, except truth and a good conſcience, ſhould count nothing too dear to part with to put an end to them.

The principle that prompted me to write upon this ſubject was a ſincere deſire to ſee peace, unity, and concord re-eſtabliſhed, and to expoſe to the reader's view thoſe ſhelves and rocks upon which the ignorant, careleſs, and unwary have fatally ſplit. Things, not men, are my object; and truth, not party, my purſuit: and I can honeſtly declare, that the bent of my thought, through the whole of this performance, has been to avoid error and purſue truth, by the help of a plain underſtanding and an honeſt heart, entirely

devoted to procure, as far as in my power, the true intereſt of my country, as a ſincere lover of it: and no perſon can deny that it is a good ſervice done to mankind civilly to tell, and dutifully to endeavour to recover thoſe from miſtakes that labour under them; and ſometimes a very mean perſon may be a very ſeaſonable monitor. If this performance entice people to think, examine, and enquire, whether they may not be wrong in their preſent practice in ſome things of great importance, and if ſome, by diſcovering their error, return to a better mind, glad, extremely glad, ſhould I be.

That we are unhappily divided into different parties, and that there are great numbers amongſt us ſowing diviſions amongſt the people, and ever intent upon the ruin of the conſtitution, and deſirous to introduce anarchy and confuſion, is too plain to ſtand in need of proof. Theſe

people's dark dealings and helliſh principles I have endeavoured to detect and refute, and, whatever the reader may think of what is here preſented, I can aſſure him that I have neither any temporal intereſt to ſerve, nor any bias, that I am ſenſible of, to miſlead me: my intention is, and I hope will continue to be, invariably to adhere to truth to the beſt of my knowledge, without regard to perſons, parties, or powers; and my head, hands, and heart are devoted to the ſupport of the true intereſt of theſe kingdoms; which can never be obtained or preſerved but by a ſteady and religious adherence to the fundamental and eſtabliſhed laws of the conſtitution.

I have endeavoured wholly to diveſt myſelf of party, prejudice, or fancy, and diſpaſſionately to expoſe ſeveral dangerous doctrines, and to lay down the principles of government in their primitive purity,

upon the ſolid foundation of unchangeable truth: And I may boldly aver, and am ready, at any time, more fully to prove, that every ſingle doctrine advanced in the following ſheets is agreeable to the conſtitution, expreſs ſtatutes, laws, and law-books; is the voice of nature and reaſon, and neceſſarily ariſes from the nature of government; is the opinion of the moſt eminent lawyers of this nation; and was delivered not only by the moſt accompliſhed of mankind, by the moſt exalted of creatures, but by the adorable author of all wiſdom, both in the old and new teſtament; was taught and practiſed by the martyrs and confeſſors of the primitive church; is the doctrine of the church of England both in her homilies, worſhip, and articles; and was taught by her moſt eminent divines ſince the reformation; and has the countenance of both univerſities. With ſuch a cloud of witneſſes, with ſuch a ſtrong army, I am not afraid

to face any party or power; and I am ſure I have not laid down any one principle without the above authorities. Some perhaps may call this a libel, or ſeditious, as we live in an age when home truths cannot be heard; when certain ſubjects, if truly handled, muſt be ſuppreſſed, or arbitrarily ſtamped with the ignominious epithet of a libel: but let theſe beware, leſt, in paſſing ſuch a cenſure upon this book, they call the laws of God, of nature and of nations, particularly thoſe of England, ſeditious; and both God and the king rebels: for the above authorities tell me, "Don't give yourſelf any trouble to fee counſel, we ſhall be your counſel, we ſhall be your vouchers." What is here hiſtorically related of any ſect, or of any particular period of time, is founded upon facts impoſſible to be denied; but if any one, ſenſible of modeſty, and maſter of the ſubject, thinks he has any thing to ſay in reply, I ſhall willingly hear him; but,

but, knowing how eaſy it is to demonſtrate the truth of all I have advanced, with much more to the ſame purpoſe, I am apt to imagine the more one examines it, the leſs he will think of a reply, if truth is what he aims at, and if that is not his view, I deſpiſe both him and all he has to ſay.

I am well aware that the ſtream of prejudice is ſo overflowing, in theſe turbulent and licentious times, that reaſon has been long excluded as an unwelcome viſitant; and whoever refuſes to enliſt under the banner of faction, and reſolutely combats any popular tenet, is inſulted by the unthinking multitude as a betrayer of his country, and branded by partiſans as the hireling of adminiſtration: for this age ſeems to be well acquainted with the Jeſuit's maxim, *fortiter calumniare aliquid hærebit*, throw dirt plentifully and ſome of it will ſtick; defame him, defame him,

and ſomebody will believe it, was the advice of the regicides, when they were to draw up a charge againſt King Charles I. let us blacken him, by all means let us blacken him; which they did to ſome purpoſe, till their cruelty gave him coronation robes for heaven, dyed in the pure ſcarlet of his own blood.

There is in the common people a luſt to change; they are in their very tempers changeable, ſeditious, full of diſcord, deſirous of novelty, impatient of peace, idleneſs, and reſtraint, and delighting to ſee high things fall, and the government in diſtreſs; they clamour againſt arbitrary government with no other view, than, by that means, to gain power, which they may exerciſe over others. The lawleſs, infatuated, and capricious rabble, are eaſily ſwelled, like the ſea, by the blaſts of ſeditious perſons; they are drawn, as Orpheus did the ſavages, to dance after whatſoever they are tuned

tuned to, and readily follow any trumpeter of ſedition; for there is nothing they ſo ardently wiſh for as a levelling ſcheme, whereby they may enrich themſelves at the expence of their maſters: they are too credulous of reports, which the deſigners, to put them into a ferment, take the advantage of, and they need no more but to put in practice what Tacitus ſays of the falſe news of Otho's being ſlain: "At firſt, ſays he, a wandering and uncertain rumour prevailed; then, as in great lies, ſome ſay they were preſent and ſaw it; the rejoicers and envious are apteſt firſt to believe the report; and, at laſt, a general belief is given; few being willing to take the pains to make ſtrict inquiry." Accordingly, we find that faction always ſuſtains their project of deſtroying the government, by inflaming the rabble, or, at leaſt, by making an appearance as if they were inflamed; which is done by a ſort of a military diſpoſition of mob-maſters

in

nious title. The next ſtep faction takes, is to diſpoſe the people, upon all vacancies, to elect into the houſe of commons only party-men, or ſuch as would join with them in every thing againſt the crown; and, by all means, to endeavour to deprive the king of all his true friends, and to place either weak or falſe miniſters about him: the part they have to act is to adviſe plauſibly, but treacherouſly, and to betray the reſolutions and determinations of the privy-council to them, that, if any good is done, they may have counterworkers to prevent its effects. When the heads of the faction, who are always ſubtle and deſigning men, well know how eaſy it is to lead the people by the noſe under the plauſible pretence of liberty, have once poſſeſſed the people with an ill opinion of government, that it is, as they repreſent it, a monſter of iniquity, aiming at arbitrary power, &c. what can be imagined ſo abominable, that a giddy mob, inflamed with ſuch firebrands,

firebrands, are not capable to perpetrate? What will people, fraught with ſuch barbarous principles, and big with ſuch deſtructive doctrines, ſtick to do? Nothing ſurely that their ſtrength enables them to perform, and, in point of ſtrength, they are ſeldom deficient; for all the diſcontented *outs*, who have nothing ſo much at heart as to get in, and will ſtick at nothing to obtain their end; alſo all projectors, of every denomination, that wait to fiſh in troubled waters, whereby they may happen to get ſomething in the general ſcramble, for, having ſpent their own fortunes, have nothing to loſe; the band too of republicans, that are always watching an opportunity to confound monarchy; and we muſt not omit a parcel of inconſtant fools and miſcreants of no principle, or of bad ones without any mixture of good, who make miſchief for ſport, and by a natural tendency, all things elſe being to them indifferent, always

ways fall upon the ill-natured ſide; but above all the deſperate and daring of every denomination; join theſe hopeful meetings: and, in order to conceal their diabolical deſigns from thoſe that at firſt would be ſhocked with the thoughts of ſuch actions, they cover them with the maſk of liberty, which is the cloke hypocrites always wear; but if you turn it up a little, the naſty ſelf-intereſt, pride, ſedition, and rebellion, that lie lurking under it, will appear. But woe be to him that touches that ſacred veſtment, and attempts to diſſipate the clouds of error, and detect their helliſh deſigns; he that dares be ſo bold as utter a ſyllable againſt liberty, (I mean miſtaken liberty) that idol of the times, and Diana of the Epheſians, muſt lay his account upon being oppoſed, contemned, and inſulted, by a torrent of licentious abuſes; but I heartily deſpiſe and abhor the words, principles, and practices of incendiaries, and ſhall never adopt

adopt their language, nor make uſe of their weapons, which are always thoſe of defamation and abuſe, and never made uſe of but for want of better. To merit the approbation of the candid and conſiderate, and, as I ſaid before, to endeavour to undeceive thoſe that are perhaps labouring under dangerous errors, is the end I propoſe in the following treatiſe, leaving to others the unenvied office of calling names, aſſaſſinating reputations, and of trampling upon the moſt ſacred rules of ſociety.

INTRO-

INTRODUCTION.

ONE would think, that nothing ſhould be better known by men, than the firſt principles of thoſe laws, which regulate the behaviour of private perſons, as well as the order of ſociety; yet though our fortunes, lives and liberties, depend upon our laws, no one in this kingdom can ſay what is now law, or what legal ground we ſtand upon. Modern determinations, and new-fangled doctrines, have ſupplanted and ſet aſide the ancient precedents and eſtabliſhed maxims of the laws of England. Littleton is now looked upon as no lawyer, and Coke no more regarded than a cobler. Our modern lawyers prefer their novel ideal fancies, to the long and eſtabliſhed rules of antiquity in our law-books. When

our laws thus float upon the changeable ſurface of men's private opinions, there can be no fixed ſecurity for our eſtates, lives and liberties. Indeed, the very eſſence of the law is totally changed, and the foundation of our glorious conſtitution is removed. A conſtitution which had long continued as an old oak, which had often been wounded, and on ſeveral occaſions had felt the axe even at its roots, yet it ſurvived all thoſe dangerous blows, and long continued to yield both due protection and pleaſing ſhade to all who were under it.

Duris ut ilex tonſa bipennibus
Nigræ feraci frondis in algido,
Per damna, per cædes, ab ipſo
Ducit opes animumque ferro.
Horat. Carm. lib. iv. ode 4.

Yet of late its foundations have been tore up; and in place of that ancient glorious fabric, a modern Babel of confuſion has been erected by ungodly hands.

As

As to politics, every body is a politician in England, and has formed, in his own mind, the beſt ſyſtem both for peace and war. He diſlikes the miniſtry, becauſe he fancies he is wiſer himſelf; and therefore reckons up all their failings, and a great many more than ever belonged to them: and, if things go on unſucceſsfully, he is ſure to impute it to the fault, rather than the misfortune of the adminiſtration; becauſe it is natural for the people to be ſuſpicious of their governors; but they never diſtruſt their own opinion, or imagine that any other can ſee farther, or know better, than themſelves. Thus it is that the Engliſh populace are too deeply verſed in politics, and yet too little; too deeply to obey with readineſs and cheerfulneſs, and too little to make a wiſe and prudent choice for themſelves. On the other hand, the great finding no other way to the honours and emoluments of the ſtate, and the gratification of their ambition, but through the labyrinths of popularity, take the ſhorteſt and ſureſt

road they can find to arrive at them: that is, they apply rather to the paſſions and foibles of the people, than inform their reaſon, or enlighten their judgments. For the bulk of mankind are much ſooner cajoled than inſtructed. Flattery is pleaſing; inſtruction diſagreeable and forbidding. Therefore a candidate at an election is ſervile and fawning; he conſults the humours, tempers, caprices and follies of the voting mob, their friends and acquaintance; and ſuits his own behaviour accordingly. Nothing is too abject for him to ſtoop to; no party diſtinction ſo ridiculous, that he will not, by himſelf or his agents, make uſe of on that occaſion. And while the mental part of theſe unhappy people is thus continually amuſed by flattery, their animal part is gratified by unbounded indulgences. But if the candidate is outdone by his antagoniſt in theſe popular entertainments; if he is inferior to the other in the arts of popular declamation; then he frequently has recourſe, as the laſt ſhift, to

the tempting influence of pecuniary bribes, and ſo corrupts the heart, where he cannot influence the underſtanding. Thus has the civil conſtitution unhappily eſtabliſhed ſome circumſtances in the ſtate, which eventually counteract the natural good tendency of religion, and neceſſarily introduce bad morals. Confuſion ſeems to run like wild-fire through this once happy iſland: men look with diſtracted faces, and know not how to extricate themſelves out of what they call inevitable ruin. The preſent moſt infamous corruption hath joined hands with a large ſtanding army, like Herod and Pontius Pilate, for our deſtruction. Miſerable indeed muſt be the caſe of the unhappy patient, who hath more to fear from the doctor than the diſeaſe. Corruption hath totally ſubverted our conſtitution; it hath turned our national and conſtitutional guards into our natural and unconſtitutional enemies. This infamous corruption is backed and ſupported by a large ſtanding army; an army

which the people raiſe and pay, to defend their rights, lives and liberties, but which of late has been employed to take them all away.

What was it, ſays Mrs. M. that firſt gave riſe to, and increaſed theſe horrid diſorders attending elections, but the lucrative proſpect which a ſeat in parliament, in the preſent mode of corruption, gives for the enriching the repreſentative, at the expence of his country and conſtituents? Take away the cauſe, and the effect will ceaſe; take away from the repreſentative, by a quick and thorough circulating round of rotation, every ſuch lucrative and corrupt proſpect of private intereſt, and the warm contention for ſeats in parliament, both on the ſide of government and individuals, will ſink into a coolneſs, which will reduce ſuch elections to the quiet calmneſs of a nomination for pariſh officers. This certainly is the root of all our evils. The government, in order to ſtrengthen the hand of executive power, hath

hath invented many thouſand places, penſions, and lucrative jobs, which bind in a league together the occupiers of them againſt the community. Theſe tools of ſtate always act under the will and direction of their patrons, and concur in applauding the meaſures by which the ruin of the community may be moſt effectually brought about. They have one common object, the ruin of public, for private advantage. As long as the nation is able to ſupport this expence, we may go on, feeling now and then only a few convulſive throws among the great, who cannot all govern; and, as the lucrative places cannot be made equal to the number of thoſe who think themſelves qualified for them, there will always be contentions amongſt the great; and while great men want great poſts, the nation will never want real or ſeeming patriots. Venality is now become ſo univerſal, that almoſt all are warped from their duty by the allurements of money, power, or titles. The

truth of the matter is, that miniſters, and would-be miniſters, are too much alike; and the preſent outs are willing to indulge the preſent ins, with the new convenient mode of carrying on buſineſs, in hopes of enjoying the ſame advantages themſelves. When this dangerous ſyſtem of politics commenced, the adminiſtration had the confidence of the people, who dreaded nothing but arbitrary power. To a free parliament, men elected by themſelves, they made no ſcruple to ſurrender every thing; they granted whatever ſupplies their deputies required. When the government diſcovered this, and ſaw that all the power was fallen into the hands of the parliament, Come, ſaid they, we will not terrify the people with any immediate act of abſolute power; let us procure by bribes, places, penſions, and lucrative jobs, a majority in the houſe; then we ſhall be abſolute, and carry every thing before us. Thus the power of the crown, almoſt dead and rotten, as to prerogative, grew up anew,

anew, with much more ſtrength, and far leſs odium, under the name of influence. An influence which operated without noiſe and without violence; an influence which converted the very antagoniſt into the inſtrument of power; which contained in itſelf a perpetual principle of growth and renovation; and which the diſtreſſes and proſperity of the country equally tend to augment, was an admirable ſubſtitute to prerogative. This influence, this abſolute, unlimited, new-created prerogative, not only ſtrikes a palſey into every nerve of our free conſtitution; but in the ſame degree benumbs, ſtupifies, and confounds the whole executive power; rendering government, in all its grand operations, languid, uncertain, ineffective; making miniſters fearful of attempting, and incapable of executing, any plan of domeſtic arrangement, or foreign politics. Government is put under the diſagreeable neceſſity of protecting, from the ſeverity of the laws, that very licentiouſneſs which they had introduced.

duced. Venality and corruption hath diffuſed itſelf over all ranks and degrees of people. The parliament cannot, with any propriety, puniſh others for things in which they themſelves have been accomplices. The controul of parliament upon the executive power is loſt; becauſe the parliament is made to partake in every conſiderable act of government. Well might a popular orator ſay, the conſtitution is rotten, the foundation is rotten; every corner of the three kingdoms teems with unparalleled oppreſſion. Certainly the grand foundation is ſapped; the main pillars are ſubtilely undermined; the ſtrong bulwarks, the principal ramparts and battlements of the auguſt and once-revered fortreſs of the Engliſh conſtitution is tottering into fatal and irretrievable ruin: the dreadful cataſtrophe threatens univerſal havoc.

There is no natural event in the hiſtory of an empire, which we are enabled from the records of various nations to determine

mine with a greater degree of probability, than the approach of its extinction. The period at which corruption begins ſenſibly to affect a political conſtitution is different in different governments, and its progreſs may be variouſly retarded and accelerated; but when once the poiſon is univerſally diffuſed amongſt the people, the inevitable cataſtrophe is at hand. The ſigns preceding this terrible period, are a relaxation and debility of the reins of government. This we ſee moſt viſibly in England: That government is at once dreaded and contemned; that the laws are deſpoiled of all their reſpected and ſalutary terrors; that their inaction is a ſubject of ridicule, and their exertion, of abhorrence; that rank, and office, and title, and all the ſolemn plauſibilities in the world, have loſt their reverence and effect; that our foreign politics are as much deranged as our domeſtic œconomy; that our dependencies are ſlackened in their affection and looſened from their obedience; that we know neither

ther how to yield or how to enforce; that hardly any thing above or below, abroad or at home, is ſound and entire; but that diſconnection and confuſion in offices, in parties, in families, in parliament, in the nation prevail, beyond the diſorder of any former time. Theſe are truths univerſally admitted and lamented.

The more remote ſigns of a diſſolution, and which are the ſame with the cauſes, are luxury, faction, irreligion, and a total degeneracy of manners. The extraordinary progreſs of luxury is ſo viſible and notorious, that it would be ſuperfluous to demonſtrate it. Faction is ſuch an oppoſition to government as has for its object, not the public good, but the intereſt of a few individuals; and there is no nation in Europe ſo much diſtracted by this domeſtic enemy as Great Britain. The minds of the ambitious are ſtimulated to attempt, by means of oppoſition, what they cannot hope to obtain by the uncertain changes of admi-

adminiſtration; at the ſame time that they are ſtill further excited by the number of lucrative places with which our government abounds, and which were deſigned to ſwallow up all oppoſition, but will in the end ſwallow up the contrivers of them, and the unhappy nation to the bargain. For combinations of affected patriots are formed, who, taking the advantage of the diſtreſſes of the people, and, in conſequence, their jealouſy in regard to their liberties, negligent of their real grievances, which they know themſelves unable to remedy, continually buzz into their ears imaginary apprehenſions and grievances, promoting deluſion and democratical ferment, to favour the purpoſes of a turbulent and avaricious ariſtocracy.

Irreligion and a degeneracy of manners are ſo much the conſequences of a high degree of luxury, that they never have been found to exiſt ſeparately. Without deſcribing the preſent ſtate of Great Britain in re-

ſpect

ſpect of morals, I believe it will be univerſally allowed, that we are advancing, and are near arrived at the gaol of depravity, which has finiſhed the duration of every former empire. It therefore appears unqueſtionable, that there exiſt amongſt us at preſent all the tokens which can preſage the declenſion of a ſtate. While the great are contending for power, profit, and preferment; the poor are loaded with ſuch heavy taxes as extinguiſh domeſtic induſtry, which is much more valuable than foreign trade, and is the foundation of it.

This country groans and languiſhes under monſtrous and inconceivable burdens. If a body, being let blood, be ſtill kept languiſhing without any remedy, how can the good eſtate of the body ſtill remain? Such is the ſtate of this country; and if the blood-ſuckers be ſtill let alone, to ſuck up the national wealth, for which by the

ſweat

ſweat of our brows, even up to our knees in mire and dirt, we have laboured, what will be the end of thoſe things? A ſpend-thrift, who mortgages every year, does not feel the want of money ſo long as his eſtate laſts, or his creditors forbear to call upon him: but equally fatal will it be to Great Britain, as to him; for they are both deluded into the belief of the reality of ſuch falſe wealth. The high premiums given for new loans had ſunk the price of the old ſtock near a third of its original value; ſo that the purchaſers have an obligation from the ſtate to repay them with an addition of thirty-three per cent. to their capital. Every new loan required new taxes to be impoſed; new taxes muſt add to the price of our manufactures, and leſſen their conſumption among foreigners. The decay of our trade muſt neceſſarily occaſion a decreaſe of the public revenue; and a decay of our funds muſt either be made up by freſh taxes, which would only add to the calamity, or our national credit

muſt

muſt be deſtroyed, by ſhewing the public creditors, the inability of the nation to pay them their principal money. What will it then avail Great Britain to have retained fit ſtations for her ſhips to annoy the enemy, if ſhe has neither revenue to equip a fleet, nor ſeamen to man one ſufficient for the purpoſe.

Such part of this heavy burden as falls upon our artificers and mariners, ſuperadded to all other impoſitions, muſt either ſink them to poverty, and thence force them into foreign ſervice, or oblige them to demand an increaſe of wages, which muſt advance the price of our freights; and, in either caſe, our carrying-trade cannot be recovered. The loſs of our carrying-trade muſt be followed by the decay of that of ſhip-building, and the emigration of our moſt valuable artificers. A diminution of our revenue, from conſumption, muſt attend the loſs of ſo many uſeful hands, and the whole value of all their

labours

labours muſt be taken out of the balance in favour of this country, and thrown into the ſcale of other nations; perhaps into that of our rival. Effects equally ruinous muſt be produced by the increaſe of taxes upon the manufactures: heavy taxes, and low wages muſt raiſe the price of manufacture, and diminiſh its conſumption at home, and leſſen the demand of it abroad. In either caſe the nation loſes its trade, and with it its people; and the public revenue moulders away of courſe, and foreign countries will become the aſylum for Britiſh manufacturers and artificers; and the ſame cauſe, which will ſerve to increaſe their ſhips and commodities, and to reduce thoſe of England, muſt alſo give her the tranſportation of all foreign commodities from one nation to another. Theſe are conſiderations which ought to fill every Britiſh ſubject with horror. Such are the dangers Great Britain ſtands expoſed to; and if, to avoid one part of them, it ſhould be propoſed to take off ſome of our moſt burdenſome

taxes, the reduction of the revenue would alarm the public creditors, and accelerate the miſchiefs intended to be prevented. When ſo large a ſhare of the ſurplus of the ſinking fund is thus yearly taken away from its original deſignation, and applied to the current ſervice in time of peace, what hopes can we have of ſeeing ſuch a reduction made in the capital of the public debt, as ſhall enable the parliament to redeem ſome of our burdenſome taxes, and give relief to our manufacturers, artificers, and mariners? And how melancholy is it to reflect, that when every engine for taxation has been employed, every project for draining money out of the people's pockets has been tried, and all corners of the exchequer ſearched into, and every gleaning of revenue brought to account, we yet find ourſelves unable to pay off a million per annum of our national debt, and ſtill continue every tax.

The

The effects of the prodigious revenue drawn from the people ſince the laſt peace ſhew themſelves in the increaſed prices of labour and the neceſſaries of life. There is no need of having recourſe to hidden cauſes, to account for the increaſe of the prices of all productions of labour, when it is known that the people of Great Britain now pay upwards of four millions more than they did before the war. Every man, when he pays his proportion of that ſum, thinks how he may reimburſe himſelf at his neighbour's expence, and raiſes his price accordingly: thus the increaſe of price becomes at laſt general. It now powerfully acts upon our manufactures; and by raiſing their price, diminiſhes our exports; and our imports, either open or clandeſtine, will, from the ſame cauſe, be augmented: both ways the balance in favour of Great Britain will be reduced; and our circulating ſpecie diminiſhed. As our trade is at preſent circumſtanced, the

balance in our favour is not very conſiderable. In the year 1766, it is ſtated at 3,135,222 l. In abatement of this ſum, it is to be noted, that goods exported, which neither pay duty nor receive drawback, may be eſteemed at the diſcretion of the exporter; and that it is the cuſtom of merchants to over-enter, as well to avoid the expence of a ſecond entry, as to give themſelves the reputation of an extenſive trade; conſequently, the value of the exports, taken from the cuſtom-houſe entries, muſt always exceed the true value of the goods actually exported. On the other hand, goods imported are valued in the cuſtom-houſe entries as they ſtand rated for the payment of duties; and in many caſes are rated much below what the importer pays for them; ſo that the nation not only receives leſs, but pays more, than appears from theſe accounts. Beſides, all clandeſtine importations are of neceſſity unnoticed in the cuſtom-houſe books, but yet

yet their value muſt, in a national eſtimate, be taken into the account, as they equally ſerve to leſſen the balance in favour of the nation, as goods legally entered. The real balance therefore in favour of Great Britain, from her trade with the whole world, muſt, in the year 1766, have been conſiderably under two millions and a half; and out of that ſum ſhe had to pay the intereſt accruing to foreigners from that part of the public debt which is their property. It was computed, that of 72 millions Great Britain was in debt before the war, about 20 millions belonged to foreigners. The German war in four years coſt her above 25 millions: if that ſum only was returned to her, and inveſted in her three per cent. funds, (which in thoſe years ſold at a diſcount of 25 per cent. on a medium) foreigners will now ſtand creditors to Great Britain for 52 millions; which, at three per cent. intitles them to an intereſt of

1,560,000l. This ſum is therefore to be deducted from the balance of our foreign trade, and the remainder is all we have to look to for ſupplying us with gold and ſilver, as well for our manufactures as circulation. Such being our caſe, it is not to be wondered at that our coined ſpecie is every day decreaſing, and that the price of bullion advances; and ſhould the balance of our trade continue to leſſen, we cannot long expect to have ſpecie to pay our foreign creditors; or any thing but paper-bills to carry on our trade at home. A ſituation to which we have been approaching with careleſs ſpeed, unſuſpicious of the conſequences, and inſenſible of the calamities which hang over us. A mind not totally devoid of feeling for the miſeries of his country, cannot look upon ſuch a proſpect without horror; and a heart capable of humanity, muſt be unable to bear its deſcription. An impoveriſhed and heavily burdened public! a declining trade

and

and a decreaſing ſpecie! a people luxurious and licentious, impatient of rule, and deſpiſing all authority! government relaxed in every ſinew, and a corrupt ſelfiſh ſpirit prevailing! the ſtate deſtitute of alliances, and without reſpect from foreign nations! a powerful combination, anxious to retrieve their honour and wreak their vengeance upon her! If ſuch be the circumſtances of Great Britain, who that loves his king or his country can be indifferent about public meaſures? Is it of no importance to an Engliſhman, that the trade and manufactures of the nation are going to ruin; that Great Britain is in danger of becoming a tributary to France; and the deſcent of the crown dependent on the will of that ambitious nation. Thus reaſoned one of the ableſt financers that has lived theſe hundred years. Our taxes are not only great in their number, and grievous in their effects, but injudicious in their nature; and nothing but infatuation itſelf could have ſuggeſted ſuch modes of taxation and ſuch taxes.

In the firſt place, the ſalt tax can have no ſhadow of argument to plead in its behalf; for if ſalt is a good manure for lands, the taxing of ſalt is the taxing of manure; and ſurely all manures are raw materials of the moſt important, moſt extenſive nature. Judge, therefore, how impolitic it muſt be to ſtop ſo many improvements, and the circulation of ſo much labour by one ſingle tax. But further, ſalt is an abſolute neceſſary of life; adminiſtering to no pride, vanity, or exceſs whatever; and conſequently the moſt improper to be taxed. The duty on coals is a very pernicious duty, and ſubject to all the objections of the former. The duty on ſoap, candles, and leather; the extravagant duty upon the importation of coarſe olive oil, a raw commodity, and a moſt uſeful article for our woollen manufactures, and in making Caſtile ſoap; are ſome of the many injudicious taxations of this kingdom, which certainly none but thoſe who were contriving the ſpeedieſt and moſt effectual means

means to ruin it could have ever thought of. A tax ſhould be contrived to prevent idleneſs, check extravagance, and promote induſtry. The idle, the ſpendthrift, the vain, ſhould feel the weight of taxes; but the induſtrious ought to be exempted. National induſtry and labour are the true riches of a kingdom, and certainly ſhould not be diſcouraged by taxes. Nature is juſt to all mankind; ſhe rewards people for their induſtry, whilſt ſhe renders them induſtrious, by annexing rewards in proportion to the greatneſs of their labour. But if, by exorbitant taxes, people are deprived of the recompences of nature, they fall into diſreliſh of induſtry, and then indolence and inaction ſeem to be their only delight. Let people contribute as largely as you pleaſe to the ſupport of government, when they are indulging themſelves; but when they are contributing to the public good by labour and induſtry, then let them feel no oppreſſion: for exceſſive

taxes

taxes produce ſlavery, and ſlavery produces a diminution of taxes. We are now ſo loaded with oppreſſive burdens, that we muſt ſoon either periſh with miſery and hunger, or fly into the woods and live like the wild Indians.

The exciſe is a monſter, horrendum infame et ingens, the fitteſt engine for tyranny and ſlavery that could be invented. No leſs than five millions ſterling were raiſed laſt year by that fund, which is expreſsly decried and prohibited in the Magna Charta, by the name of *Maltolt*; or evilly taking away the property from the ſubject. If men of landed property, who by themſelves, or by perſons elected by themſelves, give their aſſent to this Maltolt, were the only ſubjects in this kingdom bound by it, there would be no ground of complaint; except by their heirs and ſucceſſors, who would juſtly execrate their memories, for ſaddling them with

ſuch

ſuch grievous burdens. But when it is a known fact, that every the meaneſt mechanic in the kingdom, who earns his bread by candle-light; every day-labourer, who drinks a draught of ſmall-beer; and even the beggar who has but half a ſhoe to his foot, muſt pay his quota to this tax; to which he never gave his aſſent, directly or indirectly: O horrid! what a frightful ſpecies of cruel oppreſſion this is; to be plundered of our property without our conſent, and even contrary to law!

Our exciſe duties are certainly moſt exorbitant and unreaſonable. Wherever the welfare of a kingdom is the chief care, there you will find no exceſſive duties upon merchandize; the impoſt and the value of the commodity will bear a due proportion to each other. Nothing can render us more exquiſitely ſenſible of our ſlaviſh ſituation, than to be forced to pay duties ſo vaſtly diſproportioned to the value of the commodity.

modity. Smuggling being, in this caſe, extremely lucrative, the natural and moſt reaſonable penalty, namely, the confiſcation of the merchandize, becomes incapable of putting a ſtop to it; eſpecially as this very merchandize is, intrinſically, of an inconſiderable value. Recourſe muſt therefore be had to extravagant puniſhments; ſuch as thoſe inflicted for capital crimes. All proportion then of puniſhment is at an end. People that cannot really be conſidered as bad men, are puniſhed like villains; which, of all things in the world, is the moſt contrary to the ſpirit of a moderate government. In Turkey they raiſe only a ſingle duty for the importation of goods, and afterwards the whole country is open to the merchant. Falſe entries are not attended with confiſcation or increaſe of duty. In China they never open the baggage of thoſe that are not merchants. Defrauding the cuſtoms in the territory of the Mogul is not puniſhed with confiſcation, but

but with doubling the duty. The princes of Tartary, who reſide in towns, impoſe ſcarce any duty at all on goods that paſs through their country. In Japan, it is true, the defrauding of the cuſtoms is a capital crime; but this is becauſe they have particular reaſons for prohibiting all communication with foreigners. Hence the fraud is rather a contradiction of the laws made for the ſecurity of the government, than of thoſe of commerce. The officers of the exciſe, dependent upon the breath of the miniſter, conſequently the tools of every adminiſtration, are diſperſed over all the kingdom; and having it in their power, through the arbitrary ſyſtem of the exciſe laws, to favour or haraſs every individual with whom concerned, are a formidable body, and a powerful acquiſition to the court. Theſe are ſome of the many evils ariſing from the national debt. Yet ſome will tell us, our grievances are not real, only imaginary. But let theſe men be called

out

out from the ſunſhine of court favour; let them be deprived of their places, their penſions, and their jobs; and placed in the ſituation of other ſubjects, mixing freely with them, and bearing their portion of the common oppreſſion, without reward; and then let the moſt hardened and abandoned of them be aſked, If they hear no complaints? if they feel no grievances? and they will then be diſpoſed to acknowledge, what they are at this moment conſcious of, that every corner of the kingdom teems with unparalleled oppreſſion, every nerve of government is ſtrained to diſtreſs the nation. But the hand of vengeance ſhall find them out. If the ſervile creatures of the court, the numerous band of mercenary hirelings, who, by long violence to the feelings of humanity, have loſt them; if the court ſycophant and the court mercenary, whom habitual proſtitution has made callous to ſhame, will ſell their birthright, the freedom of themſelves and their

poſterity, for guilt and diſgrace; is it poſſible that an Engliſhman can ſee this with indifference? can, with eyes open to the dangers which threaten the nobleſt conſtitution which the world ever beheld, ſit ſtill and approve the meaſures by which its ruin is to be effected? What will the people ſay? What will poſterity ſay? Some future hiſtorian, lamenting the ancient ruins of ſhattered liberty, will ſay, *Vendit hic auro patriam.*

But ſome will ſay, Who art thou that preſumeſt to write in ſuch a ſtrain? or, Who hath commiſſioned or given thee authority to do ſo? To which I anſwer, That I am one who, by reading and thinking particularly and impartially, and by obſerving the natural tendency, effects, and conſequences of things, have been convinced that there are many miſtaken notions entertained by many, in matters of high importance for the well-being of ſociety, which

which I have preſumed to mention. This the conviction of my own mind, ſupported by the happy liberty of my country, authoriſes me to do; and in doing ſo, I not only ſpeak my own ſentiments, but thoſe of many others. And as I am perſuaded that ſuch a juſt conception of things would tend to promote the happineſs of this country, I think it my duty to lay this book before the public; and I hope this will be looked upon as a ſufficient apology for ſo doing. There are but three ſubjects worth a wiſe man's while to write about——*Government*, *Phyſic*, and *Religion*: the two firſt to make us eaſy and comfortable in this world, and the other to make us eaſy and happy in the next. No one can be juſtly blamed for employing his thoughts on a ſubject which ſo nearly concerns the welfare of himſelf and his country as government does.

I am

I am neither inclined to ſeverity nor licentiouſneſs, and diſdain to act from low and corrupt views, or from a ſpirit either of reſentment or partiality, much leſs of faction. I ſhall always preſerve a hearty loyalty to the king, with a juſt concern for the ſacred prerogative of the crown, while I am jealouſly concerned for the rights and privileges of the ſubject. I deſire to be a faithful and good ſervant to the crown, and a true and ſincere friend to my country. I endeavour to follow the Sun's advice to Phaeton, when he allowed him to drive his chariot.

Nec preme, nec ſummum, molire per æthera currum;
Altius egreſſus, cœleſtia tecta cremabis;
Inferius terras: medio tutiſſimus ibis.
Non te dexterior tortum declinat in anguem,
Neve ſiniſterior preſſam rota ducat ad aram.
Inter utramque tene. *Ovid. Metam.* lib. ii.

" If you aſcend too high, you will burn the heavenly manſions; if you deſcend too low, you will reduce the earth to aſhes: do not drive to the right, you will meet there with the conſtellation of the ſerpent; avoid going too much to the left, you will there fall in with that of the altar: keep in the middle."

I am neither of the majority nor minority, of the court nor country party; but I profeſs myſelf of that party which wiſely, ſteadily, and honeſtly prefer the intereſt of England to any other conſideration whatever; which protect and promote the trade of the nation, providently adminiſter the public treaſure, and ſtudy to maintain the ſovereignty by ſea, which is the true defence of this kingdom. It is not my intention to arraign or applaud any miniſter. I am neither writing an eulogium upon one, nor making a charge againſt the other. I well know that the ſpirit of party

party is the madneſs of many for the gain of a few.

By ev'ry party, 'tis confeſt,
That thoſe opinions are the beſt
Which in their nature moſt conduce
To private ends——not public uſe.

MAT. PRIOR.

In juſt reaſonings, our concluſions will be according to our premiſes; from poſſible premiſes, we can only draw poſſible concluſions; from probable premiſes, probable concluſions, and that in proportion to the degree of probability; and from certain premiſes *only*, we can draw certain concluſions. Whether I have done ſo in the following treatiſe the reader is left to judge, and the author again declares himſelf open to conviction. If any perſon will make a fair, cloſe, and ſubſtantial anſwer to what I have here written, they will oblige me by the performance; and I do here publicly

declare, that if it ſhall be ſhewn that I am miſtaken, in any thing here aſſerted, I ſhall acknowledge my error; but if any illiterate hireling, inſtead of ſolid cloſe reaſoning, ſhall ſhuffle and prevaricate, and, ſerpent-like, rely upon the ſting in his tail, viz. ſatire and ſcurrility, I ſhall think myſelf obliged to paſs over ſuch kind of reply in ſilence and contempt. What harm is it to me if fools condemn me? they have always, from the beginning of the world, exclaimed moſt againſt thoſe that would do them the greateſt good.

There is a high as well as a low mob; that is, a people who do not think for themſelves, but are led by others: and there is another party who can and do think, but ambition and an avaricious mind force them to belie their own ſentiments. I poſſeſs neither of theſe paſſions in a degree to bias my judgment: I mean nothing but the good of my country; and if I had not been

ſwayed

ſwayed more by the love of truth than of my own credit, I ſhould, for many reaſons, have ſuppreſſed the following treatiſe. I do not, nay I cannot, expect that this will tend to my own private emolument: I have no party to ſerve; and I hereby ſolemnly declare, that I will not attach myſelf to any faction or party whatever, where truth and right are not. The *honeſtum* is my philoſophy, and love to God and man my religion. I know ſome look upon me as very imprudent, for expoſing myſelf, by maintaining ſuch old, antiquated, though ſound, principles. God knows who are prudent and who are not. If acting according to my conſcience, in things where I have not the ſmalleſt doubt of their being well founded, is imprudence, I am indeed chargeable with it. But if thinking men were always ſo prudent as to be ſilent on theſe occaſions, there never would be any reformation brought about. Many are deſirous that ſome ſhould ſpeak, yet al-

moſt every perſon, frightened at the danger that muſt attend himſelf, moſt carefully avoids it. Who am I then, that I ſhould dare to ſtand out in this cauſe? God knows I preſume not on my own ſtrength nor abilities, but intirely rely upon him, who is the common Father of all mankind, and who is therefore deſirous to promote the happineſs of all his creatures; and to his will I deſire to dedicate all my thoughts, words, and actions, now and for ever.

It is a moſt miſerable ſlavery to ſubmit to what we diſapprove, and to give up truth for no other reaſon but becauſe we have not fortitude enough to ſupport us in aſſerting it. For my own part, I am neither afraid nor aſhamed to profeſs, that to me the welfare and happineſs of my king and country are very intereſting concerns; and that of all human controverſies, I think that which has the good of the people and the ſafety of the ſtate for its ſubject the moſt

moſt important, and deſerves to be treated with the moſt ſolemnity. "The fool may ſcatter his firebands and death, and may ſay, I am in ſport;" but the man who reflects upon the fatal conſequences which may follow to millions of his fellow-creatures from a wrong meaſure in government, or from ill-founded or miſtaken opinions adopted by the people, will be cautious how he advances a falſehood, or miſrepreſents a truth. I have honeſtly given my opinion to my country; and I wiſh it to be conſidered, as it really is, the honeſt ſentiments of a well-wiſher to the public, who is open to amendment and confutation, and no otherwiſe meriting attention than as he may ſerve to convey information, to diſcover public evils, or point out remedies. I can lay my hand upon my heart and ſay, ſuch are its wiſhes; and let him who reprehends me do the ſame. I ſhall take information cheerfully from whoever will be at the trouble to give it; and ſhall

not object to it, even though perhaps it may be conveyed in an ungracious manner. Indeed a polite and gentleman-like manner of giving inſtruction is very agreeable and pleaſing; but *docerî ab hoſte* is my maxim.

The reader perhaps will ſay, as I declare myſelf ſo open to conviction, and ſo ready to acknowledge it, why have I not anſwered what hath already been wrote againſt me? To anſwer all the enthuſiaſtic ravings of our preſent political writers, is only to comment upon their gibberiſh for thoſe that underſtand it not, and thereby to bring their folly into more credit and requeſt. For it would not have coſt much more time to confute, than it does to read their writings; the words are more than the matter, the rhetoric more than the logic; and whoever takes the pains attentively to examine what they ſay, will preſently diſcover, that they write as if they were as little

little acquainted with the laws and cuſtoms of this kingdom as with thoſe of Japan.

I make no apology for the freedom with which I have written; the ſubject is, in the higheſt degree, intereſting to our quiet and peace of mind in this life, and to our happineſs in the next: the laſt we muſt leave to time to prove; the firſt we already experience, from the woeful convulſions that at this time tear in pieces this diſtracted nation; and what may we not fear from time, when the diſeaſe increaſes and no remedy is applied? And if it ſhould happen to be our misfortune, in any ſucceeding time, to have a king who is led by his miniſters, as a flock of ſheep by their ſhepherd; is a ſlave in his palace, a child in council, a ſtranger to the army; a king who preſerves his authority only by giving it away every day. But better be thy fate, O Britain! from ſuch a combination of evils we certainly could have nothing to

expect but beggary and ſlavery. If there be any virtue in ſupporting the conſtitution of our country, let me repeat the words of a great orator, " Rouſe, Britons, rouſe; ſuffer not the moſt abandoned plunderers of millions of the public money to paſs with impunity, to wallow in the ſpoils, and hold the very people in contempt whom they have ſo baſely defrauded. Let truth hold up her mirror and the multitude will not be deceived. We have long purſued a dangerous and erroneous ſyſtem of politics; we have taken from the crown its ancient prerogatives, the natural ſupport of government; and, finding that it muſt be ſupported by ſome means or other, we have long attempted to prop it up by bribery and corruption. This deſtructive ſyſtem has well nigh ruined the nation, and now begins to operate upon itſelf." The deſign of the following ſheets is to ſhew, that government is inſtituted in order to reſtrain the fury and injuſtice of the people; and being

being always founded on opinion, not on force, it is dangerous to weaken, by ſpeculative reaſoning, the reverence which the multitude owe to authority; and to inſtruct them beforehand, that the caſe can ever happen when they may be freed from their duty of allegiance. Or ſhould it be found impoſſible to reſtrain the licence of human diſquiſitions, it muſt be acknowledged, that the doctrine of obedience ought alone to be inculcated; and that the exceptions, which at moſt are very few and rare, ought ſeldom or never to be mentioned in popular reaſonings and diſcourſes.

I ſhall here conclude, by ſhewing the firſt principles and foundation of laws, and their natural emanation from each other; which I deſign as a key and introduction to the enſuing book.

SEEING nothing is more neceſſary in all ſciences, than to underſtand the firſt principles

ciples of them; and as every ſcience begins with eſtabliſhing its own principles, which are a foundation for all the particulars that depend upon them, it is a matter of great importance, to conſider what are the principles of laws; that we may diſcover the nature and ſtability of thoſe rules that depend upon them.

We cannot take a more ſimple and ſurer way to diſcover the firſt principles of laws, than by ſuppoſing two prime truths: one is, that the laws of a man are nothing elſe but the rules of his conduct; the other is, that this conduct is nothing elſe but the advances a man makes towards his end. Man was created by God to know, ſerve, and enjoy him; the end therefore of man is to know, ſerve, and enjoy God. Hence the firſt law, and the foundation of all the reſt, is to know and ſerve God with all the heart and ſoul, and to enjoy him.

Though

Though man was made on purpoſe to know and love God, yet providence did not put him in poſſeſſion of his ultimate end, but firſt placed him in this life, as the way to attain it: but as the firſt law is common to all men, it does thereby virtually include a ſecond, which obliges them to union and mutual love; becauſe, they being deſigned for one end, and to enjoy one ſupreme good, they cannot be worthy of that union, in the poſſeſſion of their common end, unleſs they begin their union by the bond of mutual love, in the way which leads them to it. Hence the ſecond law of man is, to love his neighbour as himſelf, and to live in ſocial union with him.

Theſe two laws are both the foundation of all the particular rules of man's duty, and the fountain of all laws: their connection with theſe two we ſhall now endeavour to ſhew.

As

As God made man, and deſigned him for ſociety, he hath taken care to provide for his ſubſiſting in that ſociety: firſt, by creating men in ſuch a mutual dependence upon one another, as obliged them to enter into ſociety: 2dly, by adding to theſe general ties, which unite all mankind in one ſociety, ſome other particular bonds and obligations, by which ſome men are more cloſely united together. The particular obligations are of two ſorts.

The firſt ariſes from natural relations; as marriage between a man and a woman, and of birth between parents and children. This obligation includes that of family and kindred; which are the conſequence of marriage and birth.

The ſecond includes all other ſorts of obligations which bring any perſons nearer to one another; and are founded either upon the various ways of intercourſe be-

tween man and man, by their labour, induſtry, and all kinds of offices, ſervices, and other aſſiſtances; or upon the uſe of ſuch things as are afforded by one to another: of which nature are all the different uſes of arts, employments, and profeſſions of any kind; and every thing which can tie one man to another, either by free gifts or commerce.

By theſe two kinds of obligations, God has founded the order of human ſociety, to tie them up to the obſervance of the ſecond primary law; and as he ſignifies in each obligation what he preſcribes to thoſe who lie under it, ſo, by the different characters of the obligations, the foundations of the ſeveral rules are diſcerned, which juſtice and equity requires of each perſon, according to the circumſtances of their condition.

The obligation that is founded upon marriage, between a man and a woman, and

that

that which is founded upon birth, between them and their children, conſtitute private ſociety in each family; wherein God ties theſe perſons more ſtrictly together, that he may engage them to the continual practice of divers offices of mutual love. Upon this account he created one of each ſex; of whom children ſhould come with a thouſand wants; and ſhould ſtand in need of the care and aſſiſtance of their parents, that they might live in a ſtate of ſubjection to them. From theſe two relations of marriage and birth, we diſcover the foundation of thoſe laws which concern them.

As God created a man and a woman, and united them ſo cloſely that they two make one fleſh; from whence it naturally follows, that chaſtity ſhould be preſerved; that there ſhould be a reciprocal choice of the perſons engaging; that they ſhould be united by the prieſt, who is God's agent; that it ſhould be done in the church, as it

is

is God's temple; that the parents ſhould give their conſent, as they are to their children in the place of God; that their goods ſhould be in common. As the man is by divine appointment the head of the wife, he has over her a power proportioned to the nature of the union; and this power is the foundation of that authority which the civil laws give to the huſband.

By the conjunction of the man and woman children are produced, which is the foundation of the ſeveral duties and obligations between parents and children; and is the principle upon which depends all that the civil laws have ordained concerning the effects of paternal power; ſuch as the right of the parents for the conduct and education of their children, for the choice of their marriage, for the adminiſtration and enjoyment of their goods; alſo, the obedience of children to parents, their right to their goods and eſtates after

death, their right to food and raiment during the parent's life, &c.

The tie of birth which unites the fathers and mothers to their children, binds them alſo to thoſe who are born and deſcended from their children. And this conjunction makes all the deſcendents to be looked upon as children; and their anceſtors in the lines aſcending, to be reckoned as fathers and mothers. And as theſe deſcendents marry, they occaſion another alliance called affinity. Theſe relations of kindred and affinity are the foundation of ſeveral laws.

Since the obligations of marriage and birth, of kindred and affinity, are limited between certain perſons, and God has placed men in ſociety, to unite them together by mutual love, in ſuch a manner that each man ſhould be diſpoſed to ſhew to every other man the effects of this love, as occaſions may require; therefore he hath made

made a ſecond kind of obligations neceſſary, which ties all ſorts of perſons nearer together after a different manner, and many times thoſe that are ſtrangers to one another. To found this ſecond kind of obligation, God has multiplied the wants of men, and made them neceſſary to one another for ſupplying all their wants; and there are two ways he makes uſe of to lay upon them ſuch kinds of obligations as he deſigns for them. The firſt way is by ranging perſons in ſociety, wherein he has aſſigned each perſon his proper place, ſo as to ſignify to him, by his ſituation, the relation he ſtands in to others, and what are the duties peculiar to that ſtation wherein he is placed. Every man has his particular poſt aſſigned him; either by birth, education, or inclination; or by the effects of that wiſe conduct which diſpoſes of men's fortunes in the world. The ſecond way is the diſpoſing of events, and conjunctures of affairs, which determine every man to ſome peculiar obligations, according to the

different occaſions and circumſtances he meets withal. It is neceſſary to keep every man within his proper bounds; hence the divine inſtitution of government, and the authority of the higher powers; hence ariſe the diſtinctions between princes and ſubjects, between thoſe who are in dignities and public offices and private perſons, and the mutual obligations of each. By theſe ties God engages men to all their different duties; and in each obligation he has laid the foundation of thoſe duties that depend upon it. In theſe ſources we diſcover the principle and deſign of the laws, according to the obligation to which they have a reference. Theſe obligations are the foundation of the CIVIL LAW. Our obligations or ties to God our creator, to one another in general, to each other in particular, conſtitute the laws for the direction and government of man's life. Theſe obligations or laws receive particular deſignations, according to the nature of the

ſubject

ſubject matter about which they are converſant. When they relate more immediately to God and religion, they are ſtiled the CANON or ECCLESIASTICAL LAW; when they concern men, as members of ſmaller and larger ſocieties, they are called the CIVIL, MUNICIPAL or COMMON LAW. But as the world is now divided into many kingdoms or ſocieties, the obligations of one kingdom to another are termed JUS GENTIUM, or THE LAW OF NATIONS. What regulates the reciprocal duties of the king and his ſubjects, is called the IMPERIAL, STATE, or STATUTE LAW.

There are three ſorts of things which diſturb the order of a ſociety; *ſuits*, *crimes*, and *wars*.

Suits are of two ſorts, according to the two ways wherein men differ and attack one another. Thoſe which concern men's intereſt are called *civil cauſes*. Thoſe which

ariſe from complaints, offences, and crimes, are called *criminal cauſes*. Each kind of cauſe is the ſubject of civil laws; which regulate the method of commencing, inſtructing, and concluding a cauſe; which is called the order of *judicial proceeding*. The puniſhment of crimes is alſo a ſubject of the civil laws: one is the diſcovery and correction of the guilt; the other is the reparation of the miſchief committed.

Wars are an ordinary conſequence of the differences which happen between the ſovereign powers of two nations; who being independent upon one another, and having no common judge among them, do themſelves juſtice by force of arms, when they cannot, or will not have mediators to make peace between them; then they take the events of war to be inſtead of laws to decide their differences. This is called JUS GLADII, the LAW OF THE SWORD. This has no foundation in the two firſt or primary

primary laws, from which all laws proceed; therefore is not properly a law, but the violation of all law; *nam inter arma leges ſilent.*

There is another ſort of war, which is nothing elſe but the pure effect of violence, and of the ambitious deſigns which one prince or ſtate has upon his neighbours. This may be called LEX DIABOLI, the LAW OF THE DEVIL. For as God is author of order and union, ſo the devil is the author of diſorder and diviſion. The wars which rebellious ſubjects wage againſt their prince, are nearly connected with the laſt-mentioned law; they conſtitute however, one part of the STATUTE or IMPERIAL LAW.

All diſputes and differences between ſovereign ſtates, when they are referred to mediators, are determined by the JUS GENTIUM, or LAW OF NATIONS.

I have not taken notice of what ſome people call the LAW OF NATURE, as it is not, properly ſpeaking, any diſtinct law, but is virtually included in the two primary or firſt laws, upon which all the reſt depend: for as God is the author of our nature, the laws of God are the laws of nature.

It is by God's univerſal providence over mankind, that he has divided the earth among men, and diſtinguiſhed the nations by diverſities of empires and kingdoms; and in each kingdom he maintains civil ſociety, by the diſtinctions he has made of perſons to ſerve in all employments and places; and to reſtrain men within the bounds of their obligations.

The natural power which marriage gives a huſband over the wife, and that which birth gives to parents over their children, preſerved union and order in ſmall ſocieties

or

or families; and as people increaſed, the paternal power extended its limits, and became the fountain of law to larger ſocieties or kingdoms; and a father became a ſovereign of many children or ſubjects: from God alone he held all his power and authority; and the adminiſtration of his juſtice was committed to him: and as he repreſents God in this high ſtation, who alone raiſed him above others by his original appointment, ſo he would have all kings looked upon as his lieutenants in their office; and for this reaſon he calls them Gods, to whom he has committed this right of governing and judging men; becauſe it is a right that is not natural to any but himſelf. For the exerciſe of this power, and for the maintaining the order of ſociety, according to the laws which he has eſtabliſhed, he has given them ſeveral other rights: he has given them the right of making laws, and ſuch regulations as are neceſſary for the public welfare, according

to

to different times and places; and alſo the power of enacting penalties for crimes, and for the breach of theſe laws. Upon the ſame account of maintaining order, he has given them the right of communicating and dividing among divers perſons the exerciſe of that authority, which they cannot manage alone in all particular caſes; and alſo the power of appointing different kinds of magiſtrates, judges, and officers, that are neceſſary for the adminiſtration of juſtice, and for all other public offices. Upon the ſame act of order, ſovereigns have the power of raiſing taxes according to their neceſſities, for defraying the expences of government at home, or defending the nation abroad from the invaſions of foreigners. For ſecuring all theſe ends of the authority given to temporal powers, God has commanded all men to be ſubject to them, under the penalty of never attaining the end of their creation, the enjoyment of God. Religion indeed ſhould be looked upon as the real foundation of

the order of ſociety, and the true principle of all good order which ought to be preſerved in it. Religion and policy have one common foundation, which is the appointment of God; and they ought not only to agree amongſt themſelves, but mutually ſupport one another, after ſuch a manner that private perſons may exactly and faithfully obey both the one and the other; and that thoſe who are miniſters of theſe two powers may exerciſe them with ſuch a ſpirit, and by ſuch rules, as to reconcile them; for it is certain, that true religion and good policy do always perfectly agree.

Becauſe religion deſigns only to form good diſpoſitions in the inward man, God has given to thoſe powers, that are miniſters of it, a ſpiritual authority; whoſe only end is to govern the mind and heart, and to plant in them the love of juſtice, without uſing any temporal force to the outward man. But the office of the temporal

poral powers of policy, whoſe aim is only to regulate the external order of ſociety, is exerciſed with ſuch a force as is neceſſary to reſtrain thoſe who are not lovers of juſtice, but commit ſuch irregularities as diſturb order.

The ſpiritual powers inſtruct, exhort, and diſcharge other duties peculiar to their office; and the temporal powers command and forbid the external actions of men, maintain every one in his rights, diſpoſſeſs uſurpers, chaſtiſe the guilty, and puniſh crimes, by inflicting ſuch pains and penalties as are ſuited to preſerve the public peace. The ſpiritual powers of religion, whoſe deſign is that wicked men ſhould live and become good, have no other ways of puniſhing men, but by impoſing ſuch penalties as are proper to reduce them to a ſenſe of their tranſgreſſions. The temporal powers, which are to provide for the public peace, enact ſuch penalties as are proper

to

to maintain it, and puniſh even with death thoſe diſturbers of public order who deſerve it. But theſe differences between the deſign of religion and policy, and between the offices of the ſpiritual and temporal powers, are no ways contrary to their agreement; for though they are thus diſtinguiſhed in the exerciſe of their office, they agree in their common end of maintaining order, and mutually aſſiſt one another for that purpoſe. It is a law of religion, and a duty of thoſe who are its miniſters, to exhort and command every one to obey the temporal powers; not only for fear of their authority and the penalties they impoſe, but from a ſenſe of their indiſpenſable duty, for conſcience ſake, and the love of order. And it is a law of temporal policy, and the duty of thoſe who are intruſted with the adminiſtration of it, to maintain the exerciſe of religion, and to employ the temporal authority, and even force itſelf, againſt thoſe who diſturb it.

Thus

Thus theſe two powers agree and mutually ſupport each other.

Upon account of the difference between the deſign of religion and that of policy, God has parted the adminiſtration of them; that ſo the ſpirit of religion, which ſhould win the hearts of men by the love of juſtice and the contempt of temporal goods, might be inſpired into them by other miniſters than the temporal powers, who are armed with the terror of penalties and puniſhments to maintain external order, and whoſe adminiſtration chiefly reſpects the uſe of temporal goods. The exerciſe of the ſpiritual power is confined to what concerns ſpiritual matters, and ought not to thruſt itſelf into temporal affairs; and as the adminiſtration of the temporal power is converſant about temporal matters, it is not to meddle in ſpiritual affairs. And as the two offices are immediately appointed by God, thoſe who exerciſe one of thoſe

thoſe two powers are ſubject to them who adminiſter the other, in ſuch things as depend upon it.

AGAIN, all the different ideas which can be conceived of the ſeveral ſorts of laws, which are expreſſed by the names of laws divine and human, natural and poſitive, of religion and policy; of the laws of nations and the civil law; and by all the other names which can be given them, may be reduced to two kinds, which comprehend all laws of whatever nature, viz. *Laws immutable and mutable.*

The immutable laws, or natural laws, are ſuch as, by neceſſary conſequence, are deduced from the two primary laws, and are ſo eſſential to the obligations which compoſe the order of a ſociety, that they cannot be changed without undermining the foundations of that order.

The

The mutable laws are all thoſe which may be ſeveral ways enacted, changed, and even aboliſhed, as circumſtances and times require, without oppoſing the deſign of the primary laws, or ſhaking the foundations of the order of ſociety.

There are two different cauſes which render the uſe of mutable laws neceſſary to ſociety, and have been the ſources of that infinite multitude of mutable laws which appear in the world.

The firſt of theſe two cauſes is, the neceſſity of regulating certain difficulties, which ariſe in the application of immutable laws; and when theſe difficulties are ſuch that they cannot be provided againſt any other way than by laws, and the immutable laws themſelves do not regulate them.

The ſecond cauſe of mutable laws was, the invention of certain uſages which are thought

thought to be uſeful in ſociety. Theſe inventions of men, which may, for that reaſon, be called arbitrary matters, are regulated by a vaſt number of laws of a poſitive nature, contained in books of Roman law, canon laws, edicts, ſtatutes, or acts of parliament, and cuſtom or uſage *ſine origine*.

Mutable laws then are of two ſorts, according to the two cauſes on which they are founded: the firſt is, of thoſe mutable laws which are deductions from the natural laws; ſuch as thoſe which regulate the portion of children, the time when a perſon comes of age, &c. The ſecond is, of thoſe which have been deviſed for regulating indifferent matters; ſuch as the laws which regulate the degrees of ſubſtitution, the rights of redemption, &c.

All laws are reconciled to one another, and agree in that common deſign which gives juſtice to them all: for the juſtice of

every law is limited within its own bounds, and none of them can be extended to that which is otherwiſe ordered by another law. All kinds of exceptions and diſpenſations, which are reaſonable, are founded upon ſome law. In the application indeed of laws, many difficulties ariſe, which cannot be preciſely defined, diſtinguiſhed, and ſettled; an ample field is thereby opened to the profeſſors of law to diſplay their judgment and ingenuity, their candor and integrity. The deciſion of the difficulties which ariſe in the application of laws, depends upon thoſe who are to judge of them; which requires, on the one hand, an exact judgment, and, on the other, a perfect knowledge of the principles and particular rules, whereby they may judge of the apparent oppoſition between the rules, which occaſion contrary opinions and create the difficulty; and diſcern, by the deſign of theſe rules, the bounds and extent that muſt be given them, and the conſequences that

would

would follow from ſetting too narrow bounds, or too large an extent, to one or the other.

To acquire a perfect knowledge of the laws, ſo as to be able to hear, plead upon, and decide in a cauſe, one muſt firſt apply very intenſely to the ſtudy of the natural laws: for although it may ſeem that reaſon teaches us the natural laws, and it is more eaſy to underſtand them well than the poſitive laws, which are naturally unknown and of no force till proclaimed and made public, yet it is more difficult, and of greater importance, to know well the natural laws than the poſitive; for theſe are fewer, and require only a good memory to learn them: the natural laws, which regulate matters more common and more important, are far more numerous, and are properly the object of our underſtanding. Thus there are two cauſes which render the diligent ſtudy of theſe laws neceſſary:

First, Becauſe theſe natural laws, or rules, being very numerous, their diverſity and multitude hinder them from being all preſented to the view of every one; and no man's reaſon alone is ſufficient to find them out, and apply them to all occaſions, as will appear by the bare reading of all theſe rules in the detail of matters.

Secondly, The natural laws are the foundations of all the knowledge of right; and it is always by arguments drawn from natural laws that all ſorts of queſtions are examined and reſolved; whether they ariſe from the apparent oppoſition of two natural laws, or of a natural law and a poſitive law, or only from the oppoſition of two poſitive laws; for there ariſes an infinite number of them of all theſe ſorts. And every one may eaſily perceive, that ſince, for the deciding of queſtions, we muſt reaſon from the nature and deſign of rules, from their uſe, their bounds and extent,

and

and other ſuch like conſiderations, arguments cannot be grounded, nor deciſions framed, but upon the natural principles of juſtice and equity. And what ſtill adds to the neceſſity of ſtudying the natural laws is, that there are two ſorts of them; ſuch as are ſelf-evident truths and need not the elucidation of reaſoning, but are diſcovered at firſt ſight; the other ſort are thoſe which bring not with them this clear evidence, the certainty whereof is not diſcovered without ſome reaſoning, which ſhews their connection with the principles upon which they depend. And what adds ſtill to the neceſſity of ſtudying the natural laws is, that every where they have not the ſame extent and uſe.

It remains now that we conſider the general order of the laws of temporal policy, that we may know what rank the civil laws have among them.

The laws of temporal policy are of many ſorts, according to the different parts of the order of ſociety which they regulate.

Since all mankind compoſe one univerſal ſociety, which is divided into different nations, who have their ſeparate governments; and as thoſe nations have different intercourſes among themſelves, it was neceſſary that there ſhould be laws to regulate the order of theſe intercourſes, both for princes among themſelves, and for their ſubjects; and particularly the manner of receiving ambaſſadors, of negociations, treaties of peace, and all the ways wherein princes and their ſubjects maintain commerce and other correſpondence with their neighbours. And even in time of war there are laws which regulate the methods of declaring war, which moderate acts of hoſtility, which maintain the uſe of mediations, of truces, of ſuſpenſion of arms, of ſurrendering upon terms, the ſecurity of hoſtages,

hoſtages, &c. All theſe things are regulated by ſome laws, viz. by the natural laws of humanity, hoſpitality, faithfulneſs, and all others that depend upon the primary laws, and which regulate the methods wherein the people of different nations are to uſe them between themſelves in time of peace and war. The other ſort is, the regulations which the nations agree upon by treaties, or by ſuch uſages as they ſettle between themſelves, and mutually obſerve. And the infractions of theſe laws, treaties, and uſages, are reſtrained by open wars, by repriſals, &c.

Such are the common laws between nations, which we commonly call the *Law of Nations.*

The univerſal policy of ſociety, which regulates the intercourſe between nations by the law of nations, governs each nation by two ſorts of laws:

The firſt is, thoſe which regulate the public order of government, and are called *State Laws.* They regulate the ſeveral diſtinctions and duties of public offices, for the adminiſtration of juſtice, for managing the militia, the treaſury, and theſe offices which are called municipal; thoſe which concern the rights of a prince, his domains, and his revenues; the government of cities, and all other public regulations.

The ſecond ſort is, of thoſe that are called private right; which comprehends the laws that regulate, between private perſons, all agreements, contracts of all ſorts, guardianſhip, preſcriptions, mortgages, ſucceſſions, teſtaments, &c.

Theſe are the laws which regulate matters between private perſons, and the differences which may ariſe about them. This is called the *Civil Law.* But as civil right comprehends ſometimes many other rights,

rights, as public right, eccleſiaſtic right, the right of nations, &c. for it often happens that private men have differences in matters belonging to the right of nations, by the conſequences of war, repriſals, &c. and even in eccleſiaſtical matters, about benefices, teſtaments, &c. therefore the diſtribution of juſtice to private perſons includes the uſe of many laws, which are general regulations of the public order. Hence we ſee how extenſive a ſcience law is, and how general a knowledge is neceſſary for the profeſſion of it. For the knowledge and interpretation of laws do not only depend upon the perfect knowledge of the letter of the law itſelf, but of all cuſtoms and uſages that have any relation to law: the laws and cuſtoms of neighbouring places ſerve as examples and rules to aſſiſt in the interpretation of law, which muſt be underſtood and applied according to the whole purport, deſign, and intention of it: we muſt conſider upon what motives it was made, what

what were the inconveniencies againſt which it provided, the uſefulneſs ariſing from it, its relation to ancient laws, and the changes it made in them: and when ſome words, terms, or expreſſions, appear to have a ſenſe different from what is evidently intended by the tenor of the whole law, then the ſenſe and deſign of it is to be judged of by the whole ſeries and entire tenor of all its parts, without curtailing or adding any thing in it. The obſcurity, ambiguity, or ſome other defect in the expreſſion or wording of a law, of which our modern laws abound, and are called loop-holes, left there by thoſe that draw up the laws, who are commonly lawyers, for the good of the trade; theſe loop-holes, I ſay, afford matter for the gentlemen of the law, and may be juſtly called their *vis vitæ*, and a full, clear, and diſtinct law may be called their *vis inertiæ*.

Having now finiſhed what I deſigned to ſay of laws in general, of their nature, ſpirit,

ſpirit, and tendency, I ſhall now diſmiſs the reader, by telling him, that the ſubject of the enſuing ſheets is, of thoſe laws which concern the public order of government; the right of princes, their demains, and revenues; and the duty of ſubjects; all which are comprehended under what we call the *State Laws*.

It is humbly hoped that the errors and miſtakes of the author, in the following ſheets, will be looked upon as the more excuſable, when the reader conſiders the greatneſs of the undertaking, and the variety and intricacy of the matter he handles. For the ſubject itſelf, the apology which will beſt ſuit me, and which I am deſirous of uſing on this occaſion, is no other than what would ſuit every honeſt writer, who hath the public good at heart; and hopes that his labours may, at ſome time or other, though ever ſo diſtant, or in ſome degree, though ever ſo ſmall, be of

uſe

uſe and advantage; that is, he humbly deſires that theſe ſheets may be conſidered only as an attempt of a well-meaning perſon, on a very important ſubject for the public good.

THE

THE NATURE AND INSTITUTION OF GOVERNMENT.

SOCIETY LIBRARY

WITHOUT ſociety men could not live; without laws men could not be ſociable; and without authority ſomewhere to judge according to law, laws were vain: for law without a judge to enforce it, would be a lifeleſs thing. Lowth makes a very juſt obſervation from Ariſtotle, that thoſe who live without laws and government, muſt be ἢ θηριον or ἢ θεος, a beaſt or a God; incapable in their natures, or above the inconveniencies of it. A ſociety without laws and govern-

ment,

ment, is a tumultuous convention; neither knowing what to do, which way to proceed, how to be directed, or how to ſecure or defend itſelf.

Accordingly we find government to be the expreſs ordinance and inſtitution of the Almighty, for the good of mankind; to promote religion towards God, and peace towards men; which is the end and deſign of all government. And he hath poſitively commanded us to be ſubject to the ſupreme authority; not to offer any manner of violence to him in whom ſovereign majeſty is veſted; nay, not to think evil of him in our hearts.

We muſt not ſearch in Plato, Ariſtotle, &c. who were ignorant of the creation of the world, for the grounds of dominion and property; which are the main principles of government and juſtice. It is a ſhame and a ſcandal for Chriſtians to ſeek

the

the origin of government from the inventions or fictions of poets, orators, and heathen hiſtorians, who lived thouſands of years after the creation, and were all in a manner ignorant of it; and to neglect the ſcriptures, which have moſt particularly given us the true grounds and principles of government.

The ignorance of the creation made our grand philoſopher Ariſtotle, in his book of politics, run himſelf into ſuch contradiction and confuſion, as is perceptible almoſt to any reader of the moſt ordinary capacity. He obſerves no method at all; but, in a diſorderly manner, runs backward and forward from one thing to another; ſo that the beſt right a man can do him, is to confeſs he underſtands him not. Nor can we blame Ariſtotle for the uncertainty and contrariety we find in him about the different ſorts of government, when we conſider him as an heathen; for it is impoſſible

for the wit of a man to ſearch out the firſt grounds and principles of government, except he knew that, at the creation, one man alone was made, to whom the dominion of all things was given, and from whom alone all men derive their title: this point can only be learned from the ſcriptures. As to the imaginary contract of the people, it is a fancy not only improbable but impoſſible; except a multitude of men had at firſt ſprung up, and were ingendered of the earth; which Ariſtotle knew not whether he may believe or not.

If juſtice, which is to give every man his due, is the end of government, then there muſt neceſſarily be a rule to know how any man, at firſt, came to have a right to any thing that can truly be called his.

When we go to the holy ſcriptures, we find that the firſt government in the world

was

was monarchical, in the father of all fleſh: Adam being commanded to multiply and people the earth, and to ſubdue it, and having dominion given him over all creatures, was thereby monarch of the whole world. None of his poſterity had any right to poſſeſs any thing but by his grant or permiſſion, or by ſucceſſion from him. The earth, ſays the Pſalmiſt, hath he given to the children of men: which ſhews the title comes from fatherhood. As Adam was the firſt man, ſo he was the father, king, and lord over his family; and at firſt a ſon, a ſubject, a ſervant, or a ſlave were one and the ſame thing. The father has power to diſpoſe of or ſell his children or ſervants; whence we find, at the firſt reckoning up of goods, in ſcripture, the man-ſervant and the maid-ſervant are numbered among the poſſeſſions and ſubſtance of the owner, as other goods were.

A principal ground of the diverſity and contrariety of opinions amongſt the hea-

thens, was the error of their thinking that all things at firſt were common, and that all men were equal. This miſtake was not ſo heinous in thoſe ethic authors, who wanted, or at leaſt had ſtrangely darkened and perverted this guide, the hiſtory of Moſes, and were fain to follow poets and fables for their leaders; but for chriſtians, who have read the ſcriptures, to fancy either a community of all things, or an equality of all perſons, is a moſt unpardonable error.

Indeed, if it were a thing voluntary, and at the pleaſure of the people, to put themſelves under ſubjection, moſt certainly they may as voluntarily leave ſubjection when they pleaſe, and again be free. If they had a liberty to change their natural freedom into a voluntary ſubjection, there is a ſtronger reaſon for them to change their voluntary ſubjection into a natural freedom; ſince it is as lawful for men to alter

alter their minds as their judgments. If we are all born free, without any ſort of dependence on parents; under no reſtraint, but every one at free liberty to do what he liſteth; with an equality of power, none having authority over another, which ſurely was never yet found in any people or country ſince the creation of the world, if people will believe the creation, or the ſcripture account of it; if our firſt parents, or ſome other of our forefathers, did voluntarily bring in property of goods and ſubjection to governors, and if it was in their power either to bring them in or not; or, having brought them in, to alter their minds and reſtore them to their firſt condition of community and liberty, what reaſon can there be alleged why men that now live ſhould not have the ſame power?

The prime duties of the ſecond table are converſant about the right of property;

but if property be brought in by human law, then the moral law depends upon the will of man; and there cannot be a law againſt it, if goods were common: and if dominion was brought in by the will of man, then man hath a power to make that no law of nature which God made to be the law of nature: ſo that if any one man in the world, be he ever ſo mean and baſe, only alters his will and ſays, I will reſume my natural right to community, and conſequently take what I pleaſe, and do what I liſt; who can ſay that ſuch a man doeth more than by right he may? and then it will be lawful for every man, when he pleaſes, to diſſolve all government, and deſtroy all property. Again, if it were admitted that the people are or ever were free by nature, and not to be governed but by their own conſent, it is moſt unjuſt to exclude any one man from his right of government. If fathers will promiſe

miſe for themſelves to be ſlaves, yet for their children they cannot, who have always the ſame right to ſet themſelves at liberty which their forefathers had to enſlave them: ſo that it is neceſſary to aſk every infant, as ſoon as born, its conſent to government, otherwiſe you can never have the conſent of the whole people; for if one man be excluded, the ſame reaſon that excludes that one man may exclude many hundreds and many thouſands: for women and children, madmen and fools, have the right and freedom of ſuffrage as well as men of age, experience, and underſtanding. If any were excluded, who did it, and by what authority? if all were admitted, whether with equal right to every one, or with ſome inequality? Was the wife's intereſt in making up the bargain equal with that of the huſband, and the children with that of the parents, fools with that of philoſophers? and if one had not an equal ſhare and intereſt in the buſineſs with ano-

ther, whence did the inequality ariſe? who made the difference between them? and what right had any man to do it? how came he by a right to give more or leſs power to one than another? If it be anſwered, that it is impoſſible to ſtand ſo ſtrictly as to have the conſent of the whole people; therefore, as it is not poſſible, we muſt ſuppoſe the conſent of the majority to be the act of the whole people. This is a ſtrange anſwer; firſt to affirm the neceſſity of having the people's conſent, and then to confeſs an impoſſibility of having it: but I would have it remembered, that if once that ideal liberty be taken or broken away, only from one of the meaneſt and baſeſt of the people, a wide gap is thereby opened for any multitude whatſoever, that are able to call themſelves, or whomſoever they pleaſe, the people. It muſt alſo be remembered, that if they mean that the entire multitude, or whole people, originally have by nature a power to chuſe a king, then, by that principle,

all

all mankind in the world make but one people, who they ſuppoſe to be born alike free from ſubjection; and where ſuch freedom is, there, of neceſſity, all things muſt be common. Therefore, without the joint conſent of the whole people of the world, no one thing can be made proper to any one man, without doing an injury to, and being guilty of uſurpation upon, the common right of all others. From whence it follows, if natural freedom be once granted, no one man can be choſen a king, without the univerſal conſent of all the people of the world at one inſtant, *nemine contradicente.* Nay, if it be true that nature hath made all men free, yet it cannot ſeem reaſonable that they ſhould have power to alter the law of nature, and confer a power upon any one man which they themſelves have not.

If this general ſignification of the word people be diſallowed, and men will ſup-

poſe that the people of particular regions or countries have power and freedom to chuſe unto themſelves kings, then let them obſerve, and take with them the conſequence. Since nature has not diſtinguiſhed the habitable world into kingdoms, nor determined what part of a people ſhall belong to one kingdom and what to another, it follows that, the original freedom of mankind being ſuppoſed, every man is at liberty to be of what kingdom he pleaſes; and ſo every petty company hath a right to make a kingdom by itſelf: and not only every city, but every village, and every family, nay, every particular man has a liberty to chuſe himſelf to be his own king, if it pleaſe him ſo to do. Thus, to avoid the having but one king of the whole world, we run into a liberty of having as many kings as men in the world.

But if neither the whole people of the world, nor the whole people of any part of the

the world be meant, but only a major part, or ſome other part of a part of the world, yet ſtill the objection will be the ſtronger. For, beſides, as nature has made no partition or diviſion of the world, or of the people, into diſtinct kingdoms, ſo, without an univerſal conſent, at one and the ſame inſtant, no partition or diviſion can be made; yet if it were lawful for particular parts of the world, by conſent, to chuſe their king, their elections would bind none to ſubjection but only ſuch as conſented; for the major part never binds, but where men at firſt agree to be ſo bound, or where a higher power commands: now there being no higher power than nature, but God himſelf, where neither nature nor God himſelf appoints a major part to bind, their conſent is not binding to any but to themſelves who conſent.

Yet, for the preſent, to gratify the inſatiable republican ſo far as to admit, what

in

in fact is impoſſible to exiſt in nature, his fanciful ſtate of liberty, and that either by nature, or by a general conſent of mankind, the world at firſt was divided into particular kingdoms, and the major part of the people of each kingdom aſſembled were allowed to chuſe their king, yet it cannot truly be ſaid, that the whole people, or the major part, or indeed any conſiderable part of the whole people of any nation, ever aſſembled for any ſuch purpoſe; for, except by ſome ſecret miraculous inſtinct they ſhould all meet at one time and place, what one man, or company of men, leſs than the whole people, hath power to ſummon the reſt to convene, or to appoint either time or place of election, where all are alike free by nature? And without a lawful ſummons it is moſt unjuſt to bind thoſe that are abſent. The whole people cannot ſummon themſelves; one man is ſickly, another is lame, a third is aged, and a fourth is under age; all theſe, at ſome time

ſime or other, or at ſome place or other, might be able to meet, if they might chuſe their own time and place, as men, by nature free, ſhould.

But ſuppoſe all theſe doubts were cleared, and the contract made as they would have it, it may be demanded, whether a majority of votes ſhall include all that are preſent, diſſenters as well as others? whether, by virtue of an act of thoſe upon the place, an obligation ſhall lie upon ſuch as are caſually, neceſſarily, or willingly abſent, when it was free for them to do ſo, no man having power to require their appearance? and whether a contract made by ſuch perſons as were at liberty before, can debar thoſe that ſhall ſucceed them from the uſe of that liberty which their anceſtors had enjoyed? If ſo, by what law and right are they excluded, and from whence does the obligation to that law ſpring?

In human ſocieties, of human political conſtitution, the ſuperior power that ordains ſuch aſſemblies can regulate and confine them, both as to time, place, and other circumſtances; but where there is an equality by nature, there can be no ſuperior power; there every infant, the hour it is born, hath a like intereſt with the greateſt and wiſeſt men in the world. No one man has a right to take upon him the authority and office of regulating their proceedings, or preſiding in their aſſemblies; of determining ſuch doubts and differences as might ariſe while matters were under debate; of calculating the voices and drawing up the articles of agreement, in caſe they ſhould agree.

Again, man is like the ſea, ever ebbing and ever flowing; every minute one is born another dies; thoſe that are the people this minute are not the people the next; in every inſtant and point of time there is a variation;

variation; no one time can be indifferent for all mankind to aſſemble. If it be allowed that the acts of parents bind their children, then farewel the doctrine of natural freedom; for where ſubjection to parents is natural, there can be no natural freedom. If it be ſaid, that thoſe under age are only bound by their parents conſent, then I would willingly know, when nature declares them free; for ſurely children attaining that age ſhould be diſcharged of their parents conſent, and either agree with their parents in their choice, or chuſe one for themſelves; then the father may have one king and the ſon another: ſo that in the concluſion it will prove a mere impoſſibility ever lawfully to introduce any kind of government without apparent wrong to the multitude.

It may well ſeem a ſtrange thing that God, who not only gave being to all other parts of the creation, but framed them into

an

an excellent and beautiful order, the ſun to rule the day, and the moon and the ſtars to govern the night, and gave man dominion over the lower parts of the creation, ſhould leave mankind only, who is ſo excellent a being, without taking any order for that uſeful and regular public ſociety, which is both ſuitable and beneficial to human nature. And it is yet more unlikely, that he, who is the God of order, ſhould, for the peace and good of leſſer ſocieties, in private families, ordain the authority of parents over children, and headſhip of the huſband over the wife, and yet leave the more general and public ſtate of mankind, which is of greateſt concernment, in an unſettled ungoverned confuſion.

It would be a reflection upon the goodneſs of God to imagine, that it was not his will that juſtice ſhould be adminiſtered and vice puniſhed, peace preſerved and goodneſs

goodneſs encouraged in the world; and would be a diſparagement to his wiſdom, to conceive that he ſhould appoint all theſe things to be done, whilſt he committeth no power or authority to any perſon or order of men to take care of them. On the contrary, government is God's expreſs ordinance and inſtitution. If Adam is ordained to rule over his wife, and her deſires were to be ſubject to his, and as her's, ſo all theirs that ſhould come of her; I cannot imagine how this right of nature can be conceived, without imagining a company of men, at the very firſt, to have been all created together, without any dependency one on another; or to have ſprung out of the earth like muſhrooms, all of a ſudden, without any obligation one to another; in that caſe they ought all to have been princes of their poſterity.

But the ſcriptures teach us that there was never any ſuch thing as an independent

multitude, which at firſt had a natural right to a community. This is but a fiction or fancy of too many in thoſe days, who pleaſe themſelves in running after the opinions of philoſophers and poets, to find out ſuch an original of government as might promiſe them ſome title to liberty, to the great ſcandal of chriſtianity and the bringing in of atheiſm; ſince a natural freedom of mankind cannot be ſuppoſed, without a denial of the creation of Adam. And yet this conceit of original freedom is the only ground upon which, not only the heathen philoſophers, but alſo our celebrated (I will not ſay deſervedly) modern authors, Grotius, Selden, Hobbs, &c. with other ſilly ſcribblers, too inſignificant to be named, raiſe and build their doctrine of government. But I cannot find, and I defy any body elſe to find, any place or text in the bible, where any power or commiſſion is given to a people either to govern themſelves,

ſelves, chuſe their governors, or alter the manner of government at their pleaſure.

However much this vulgar opinion of original freedom hath of late obtained great reputation, yet it is not to be found in the ancient fathers and doctors of the primitive church; it contradicts the doctrine and hiſtory of the holy ſcriptures, the conſtant practice of ancient monarchies, and the very principles of the law of nature; and it is hard to ſay, whether it be more erroneous in divinity, or dangerous in policy. If this erroneous principle were once confuted, the whole fabric of the vaſt engine of popular ſedition would drop of itſelf.

In ſcripture the power of government is ſettled and fixed by the commandment of *Honour thy father:* if there were a higher power than the fatherly, then this commandment would not ſtand and be obſerved. But in all the ſcriptures there is

neither precept nor practice for any form of government but monarchy; and, to confirm the natural right of regal power, we find in the decalogue, that the law which enjoins obedience to kings, is delivered in the terms of Honour thy father; which ſhews that all power was originally in the father. And if we compare the natural rights of a father with thoſe of a king, we ſhall find them all one, without any difference at all, but only in the latitude or extent of them; as the father over one family, ſo a king, as father over many families, extends his care to preſerve, feed, clothe, inſtruct, and defend the whole commonwealth.

The heathen philoſophers had not intirely loſt the traditionary knowledge of the creation, for Ariſtotle himſelf affirmeth that there is a ground in nature for monarchy. The firſt kings, ſays he, were fathers of families. As for any ground for any other ſort of government, there hath been

been none yet alleged but a ſuppoſed natural freedom of mankind, the proof whereof none that I can find do undertake.

Every king that now is hath a paternal empire, either by inheritance, tranſlation, or uſurpation. But uſurpation can confer no right; for every conqueror muſt have a precedent title to juſtify the war; and if the title only makes the war juſt, then no other right can be obtained by war than what the title bringeth; for a juſt war doth only put a conqueror in poſſeſſion of his old right, but does not create a new one. So, to a conqueror that hath a title, war doth not give, but put him in poſſeſſion of a right; and except a conqueror had a full right at firſt, his conqueſts cannot give it to him. If he and his anceſtors had originally a right, and were outed of the poſſeſſion of a kingdom by an uſurper, then the conqueſt, though it be obtained by a moſt juſt war, in this caſe does not give any right,

2625178

but he muſt be remitted to his original right. If he that attempts to conquer hath a title, and he that is in poſſeſſion hath none, then the conqueſt is, in nature, a poſſeſſory action, to put the conqueror in poſſeſſion of his premier right, and not to raiſe a new title; for war begins where law ends, and it is impoſſible that any war can confer a right: and we do not, in either Old or New Teſtament, find the leaſt inſtance of God's requiring people to ſubmit to uſurping conquerors. Surely there is as great a difference between a king that holds his crown by a ſucceſsful rebellion, and one that holds it originally by the laws of nature and deſcent of blood, as between night and day; and no law can free a ſubject from his allegiance to his lawful prince: the laws of God command it; and lord chancellor Bacon tells us, that this conſtitution declares allegiance to continue after laws, neither doth length of time make a change: *Non confirmatur tractu temporis, quod*

quod de jure non ſubſiſtet. No length of time makes that lawful which was not ſo from the beginning. If there was at any time a right heir of the crown that claims, or elſe would claim, but that he wants either notice of his right and title, or power, to make it good, or for ſome other ſufficient reaſons forbears to claim, here preſcription ſignifieth nothing. This by and by we ſhall more clearly demonſtrate.

AGAIN, the ſcripture teaches us, that all men came by ſucceſſion and generation from one another, and Chriſtians dare not deny the truth of the hiſtory of the creation. If then God only created Adam, and of a piece of him made woman; and if by generation from them two, as parts of them, all mankind be propagated; if alſo God gave to Adam, not only royal authority and dominion over the woman and the children that ſhould iſſue from them, which is the fountain of all regal authority, but alſo over the whole earth to ſubdue it, and

over all creatures on it; ſo that as long as Adam lived, no man could claim or enjoy any thing but by donation, aſſignation, or permiſſion from him; I wonder any one can dream of a right of nature.

THE FOUNTAIN of all power moſt certainly was placed in the Father of all mankind, and not only the conſtitution of civil power in general, but the limitation of it to one kind, viz. to monarchy, and the aſſignment and determination of it ſpecifically to the individual perſon and line of Adam. All three are ordinances of God. Neither Eve nor her children could either limit Adam's power, or join others with him in the government; and what was given to Adam was given to his poſterity.

The kingly power which Adam, by command, had over the whole world, and which, by right deſcending from him, the patriarchs

triarchs did enjoy, was as large and ample as the moſt abſolute dominion of any monarch which hath been ſince the creation, and in his perſon was conveyed to his poſterity.

This patriarchal power continued monarchical, not only till the flood, but after the flood, to the confuſion of Babel; as the very name patriarch doth in part prove.

If we conſider the firſt plantations of the world, when kingdoms were firſt erected, we find, Gen. x. 11. the diviſion of the earth, into diſtinct kingdoms and countries, was by colonies of ſeveral families, over which the prime fathers had ſupreme power, and were kings; who were all the ſons and grandchildren of Noah, from whom they derived a fatherly and regal power over their families.

Adam lived nine hundred and thirty years; and, ſeeing ſeven or eight deſcents from himſelf, might live to command, of his children and their poſterity, a multitude far greater than many commonwealths and kingdoms.

The three ſons of Noah had the whole world divided amongſt them by their father; for of them was the whole world overſpread, according to the benediction given to him and his ſons, *be fruitful and multiply, and repleniſh the earth.*

Whoever pleaſes to look into the ſeventh chapter of the firſt book of Joſephus's Jewiſh Antiquities will find, that the ſeveral nations took their names from their founders, who were Noah's grandchildren, and captains, or kings, of their reſpective colonies.

Upon the diverſity of tongues (Gen. xi.) the people were forced to diſperſe themſelves

ſelves up and down into colonies, and ſo to plant and inhabit; ſome upon the ſea-coaſts, others in the mid-land; ſome in one place, ſome in another, according to the lot that God in his wiſdom and providence had aſſigned them: but the whole world, in fine, was to be more or leſs peopled. Men came by degrees to the uſe and knowledge of navigation, ſo far at leaſt as to make boats, and tranſport themſelves into iſlands. They gave appellations to the places where they lived, many of them retaining to this very day the names of of their firſt planters. Some, it is true, are altered; others only diſguiſed under Greek derivations, to make them more familiar and intelligible to the people thereabouts: for the Greeks being poſſeſſed of thoſe countries drew to themſelves, in ſucceeding ages, as the firſt founders and proprietors, that honour of the primitive greatneſs, of impoſing upon them, as they thought fit,

not

not only names, but laws alſo, cuſtoms, and manners to their own liking.

Now the ſons of Noah had children, who, for the honour of their memory, called the people, wherever they got poſſeſſion, by their own names; as Japhet, the ſon of Noah, had ſeven ſons, which planted themſelves in Aſia, from the mountains of Taurus and Amanus to the river Tanais, in Europe to Gades; and the places being as yet not peopled, wherever they got footing, as aforeſaid, they called the countries after their own names. Gomer was the founder of the Gomerites, called by the Greeks at this day Galatians, or Gauls; Magog was the head of the Magogians, called by the Greeks Scythians; Javan and Madeus were two other ſons of Japhet: from the latter came the Medeans, or the Medes; from the other the Ionians, and the whole race of Greeks. Thobel, or Tubalcain,

was

was the founder of the Thobelians; at this day the Iberians, or Spaniards. From Meſches, the Meſchinians, called afterwards Cappadocians; but not without ſome footſteps yet of their original in the town of Mazaca, which comes near the ancient name. Thiras, or Tiras, was the head and governor of the Thiræans (which the Greeks changed afterwards for Thracians). Theſe are the nations that were firſt planted by the ſeven ſons of Japhet.

Gomer, again, had three ſons: Aſchanaxes, or Aſhkenaz, from whence came the Aſchanaxians (the Greeks called them Rheginians); Riphates, or Riphath, the head of the Riphatæans (now Paphlagonians); and Thygrammes, or Togarmah, from whom came the Thygrammæans, which the Greeks call Phrygians.

Javan alſo had three ſons: Aliſas, the firſt of the Aliſæans, now called Æolians;

as

as from Tharſus, the Thracians, afterwards called Cilicians, as appears by their celebrating of the city Tarſus, with a mark of preference above all others, only turning the firſt letters T H, into a T. The iſland that we at this day call Cyprus, was at firſt called Chethima, from Chethimas, or Kittim, the firſt poſſeſſor of it: from hence it is that not only all iſlands, but all places bordering upon the ſea, are by the Hebrews called Chethim; and there is a town in the iſle of Cyprus which at this day is called Citium, by thoſe that, for the ſound's ſake, will make Greek of every thing; and it ſeems to have ſome affinity with Chethim. All theſe nations had the deſcendants of Japhet for their heads. But I have one thing yet to ſay, before I go any further, which perhaps the Greeks take no notice of; that is, they have gotten a way of changing names, to tickle the ear and carry the word glibber off the tongue; but for our people, they neither

ther allow nor practiſe any ſuch thing. The Greeks have turned Noe into Nochos; but we keep ſteady to the ſame form and ſyllables, without ſo much as varying the very termination.

The ſons of Ham ſettled themſelves in Syria, and ſo to the foot of the mountains Amanus and Libanus, ſtretching the bounds of their juriſdiction as far as the ſea-coaſt, and calling all places under their dominions by what names they pleaſed; but a great many of them are to us utterly loſt and forgotten, and others ſo corrupted and transformed that they are no longer to be known; only the Ethiopians have ſtood the ſtreſs of time and accidents without any alteration. Chus, one of the ſons of Ham, was their founder and governor; and they bear the name of Chuſians to this inſtant, not only among themſelves, but all Aſia over. The Meſræans alſo yet keep their own name; for Egypt, quite through the

the country, is called Meſrim ſtill, and the Egyptians, Meſræans. Phutes, or Phut, governed in Lybia, and gave the whole nation the name of Phutians; and we read in divers Greek hiſtorians of a river in Mauritania of this name, and of a country bordering upon it, which is called Phute; but the name has been ſince changed, upon the account of Libys, one of the ſons of Meſrain or Miſrain. Chanaan, the fourth ſon of Ham, gave his name to the country of the Canaanites, which is ſince called Judea.

They had all children; but Chus, the eldeſt ſon of Ham, had ſix ſons; Sabas, or Saba, the head of the Sabæans; Evilas, or Havilah, of the Evilæans, now called Getulians; Sabathes, or Sebtah, of the Sabathonians (with the Greeks, Aſtabarians): Ramus, or Ramaah, was prince of the Romans, and had two ſons; Judadus, or Dedan,

Dedan; and Sabas, or Sheba: the former gave the name and original to the Judadæans in the weſtern part of Ethiopia; the other tranſmitted his name to the Sabæans. As for Nimrod, the ſixth ſon of Chus, he ſtaid behind with the Babylonians, ſeized the government by force, and moſt tyrannically oppreſſed the people.

Meſraim was the father of eight ſons, who made themſelves maſters of the whole tract of land betwixt Gaza and Egypt. Philiſtin was one of the eight, and left his name to his country, that part of it at leaſt which the Greeks call Palæſtine. Labim, or Lehabim, erected a colony, and gave it the name of Libya; but for the other ſix, that is to ſay, Ludim, Enanim, or Ananim, Nedem, or Naphtuhim, Phethroſim, or Pathruſim, Cheſlem, or Caſluhim, Chepthorim, or Caphtorim, we know little more of them than their names; their cities and

plantations having been deſtroyed in the Ethiopic war.

Chanaan was the father of eleven ſons: Sidon built a city in Phœnicia, which the Greeks call Sidon; Anath was the founder of Anathe, a place yet in being, and by the inhabitants called Amathine; though the Macedonians have changed it for Epiphania, from one of their kings; Aradæus took poſſeſſion of the iſland Aradus; Arucæus had the town of Arce upon Mount Libanus. As for the other ſeven, Eueus, Chetæus, Jebuſæus (Eudæus), Sinæas, Samaræus, and Gergeſæus, we have nothing more of them in the holy ſcriptures than their names, for the Hebrews razed all their cities.

So ſoon as the earth began to come a little to itſelf again after the flood, (Gen. ix.) Noah fell to his work of cultivating the ground,

ground, planting of vines, gathering and preſſing his grapes in their due ſeaſon, and ſo brought wine into uſe again: but one day, after an oblation to God of the firſt-fruits of his vineyard, he drank ſo liberally of the liquor, that he laid himſelf down quite ſenſeleſs, and fell faſt aſleep, with his nakedneſs in a moſt beaſtly manner uncovered. His youngeſt ſon, ſeeing his father thus ſhamefully expoſed, called his brothers, in deriſion, to make ſport with the ſpectacle; but they, out of a pious reverence to a parent, caſt a covering over him. Noah came quickly to be ſenſible of what had paſſed, and bleſſed his other children for the good office they had done him, but with a bitter imprecation upon the poſterity of Ham; and this malediction was followed upon them with a divine vengeance; only obſerving that Ham, in his own perſon, eſcaped the curſe, out of Noah's tenderneſs to the nearneſs of his blood.

Shem, another of the three ſons of Noah, had five ſons, and the whole tract of Aſia was theirs, from Euphrates to the Indian ſea. From Elam came the Elamites, and from them the Perſians. Aſſur, or Aſher, was the founder of Nineve, and thence came the Aſſyrians, a rich and powerful people. From Arphaxad came the Arphaxadæans, or our Chaldeans. From Aram came the Aramæans (the Greeks call them Syrians); and from Lud came the Luddians, or our Lydians.

Aram had four ſons: Uz was the founder of Trachonites and Damaſcus, which lies betwixt Paleſtine and Cælé-Syria; Hull had Armenia; Gether was prince of the Bachians; and Meſas, or Maſh, of the Meſanæans, whoſe whole country at preſent bears the name of the camp of Spaſinus.

Salas, or Salah, the ſon of Arphaxad, was the father of Heber, according to whoſe

whoſe name the Jews were called Hebrews. Heber begat Jucta, or Joctan, and Phalec, or Peleg: the latter was born at the time of dividing the land (Phalec in Hebrew ſignifying partition). Jucta, the ſon of Heber, had children; Elmodad, or Almodad, Saleph, or Sheleph, Azermoth, or Hazermaveth, Eiraes, or Jerah, Edoram, or Adoram, Uzal, Declas, or Dilka, Ebal, or Obal, Abiamel, Sabeus, or Sheba, Ophir, Evilath, or Havilah, Jobab: theſe have their habitation from the river Cophene in India to the neighbouring part of Syria.

Having ſpoken already of the ſons of Shem, I ſhall carry my diſcourſe forward to treat of the Hebrews. Phalec was the ſon of Heber, and Ragaus, or Reu, the ſon of Phalec: Ragaus begat Serug, Serug begat Nachor, and Nachor begat Thares, or Terah, the father of Abraham, the tenth generation from Noah: he was born about

two hundred and ninety-two years after the flood. Thares was ſeventy years of age when he had Abraham; Nachor one hundred and twenty when he had Thares; Serug about one hundred and thirty-two when he had Nachor; Ragaus one hundred and thirty when he had Serug; and Phalec about the ſame age when he had Ragaus: Heber one hundred and thirty-four when he had Phalec; Salas one hundred and thirty when he had Heber; Arphaxad one hundred and thirty-five when he had Salas; and this Arphaxad, the ſon of Shem, and the grandſon of Noah, was born two years after the flood.

Abraham had two brothers, Naſhor and Haran; the latter died at Uz, in Chaldea, where there is to be ſeen at this day a ſepulchral monument erected in honour of his memory. He left behind him his ſon Lot and two daughters, Sarah and Melcha, or Milcha. Naſhor took the latter to wife, and Abraham took Sarah.

Thares,

Thares, the father of Abraham, had contracted ſuch an averſion to Chaldea, for the loſs of his ſon Haran, that he went away, and all his family with him, to Charan in Meſopotamia, where Thares died, and was buried in his hundred and fifth year. The life of man was now ſhortened, and God ſoon after reduced it to the ſcantling of one hundred and twenty years, which was the preciſe age of Moſes himſelf. Naſhor had by his wife Molcha eight ſons; Uz, Baux, Camuel, Chazad, Azaus, Phildas, Jadelphas, and Bathuel: theſe were all the legitimate ſons of Naſhor; but Gabæus and Gaham, Tavaus and Mathas, he had by Ruma his concubine. Bathuel had a daughter and a ſon, Rebecca and Laban. Joſeph. Jewiſh Antiq. lib. i. ch. 6th and 7th.

From the above exçerption we ſee, that wherever the king or leader ſettled, he called the country after his own name, and divided it into different parcels amongſt his ſubjects.

Moſt of the civilized nations of the earth labour to fetch their origin from ſome one of the ſons or nephews of Noah, who were ſcattered abroad after the confuſion of Babel. In this diſpenſation we moſt certainly find the eſtabliſhment of regal power throughout the kingdoms of the world. It is a common opinion that, at the confuſion of tongues, there were ſeventy-two diſtinct nations created; all which were not confuſed multitudes, without leaders or governors, and at liberty to chuſe what governors and government they pleaſed, but they were, as I have already ſaid, diſtinct families, which had fathers for rulers over them: whereby it appears that even in confuſion God was careful to preſerve the fatherly authority, by diſtributing the diverſity of languages according to the diverſity of families; for ſo it appears plainly by the text: firſt, after the enumeration of the ſons of Japhet, the concluſion is, by theſe were the iſles of the Gentiles divided

in

in their lands, every one after his tongue, after their families, in their nations. So it is ſaid, theſe are the ſons of Ham: theſe are the ſons of Shem, after their families, after their tongues, in their lands, after their nations: theſe are the families of the ſons of Noah, after their generations, in their nations, and by theſe were theſe nations divided in the earth after the flood.

In this diviſion of the world, ſome think Noah uſed lots for the diſtribution of it; others affirm he ſailed about the Mediterranean ſea, and appointed to each ſon his part: but although the manner of diviſion be uncertain, yet it is moſt certain the diviſion itſelf was made by families, from Noah and his children, over which the parents were heads and princes. Theſe families were at firſt a ſmall monarchy, but they ſoon increaſed, and became ſo very conſiderable, that Abraham alone armed of his own family three hundred and eighteen

men, and with theſe defeated Chederlaomer and the kings that were with him, and reſcued his brother Lot, and all the priſoners and ſpoils that they had carried out of Sodom.

A judicious author obſerves, that, for three hundred years, monarchy poſſeſſed an univerſal and uninterrupted empire over all the affairs of the univerſe; ſo that the Sun, the glorious monarch of the day, doth not, in all his travels round the earthly globe, behold any ſpot of ground inhabited by any thing but brutes, where monarchy either is not at preſent, or hath not been the ancient, original, and fundamental form of government.

The ancient monarchies were not ſo ſmall as we might at firſt apprehend. When we conſider the great age to which the patriarchs arrived, it will not appear ſo incredible to believe that their empire was conſiderable.

ſiderable. Joſephus tells us, lib. i. ch. 4. Adam was nine hundred and thirty years old when he died, and two hundred and thirty when he begat Seth: Seth was one hundred and five when he begat Enoch, and he departed this life at the age of nine hundred and five, leaving all to the care of his ſon Cainan, whom he had begotten in the ninetieth year of his age; and he lived to the age of nine hundred and ten: Cainan, in the nine hundred and tenth year of his age, was ſucceeded by his ſon Mahalaleel, whom he begat at one hundred and ſeventy: this Mahalaleel died at eight hundred and ninety-five, and he left his ſon Jared to ſucceed him, whom he begat at the age of one hundred and ſixty-two, and at nine hundred and ninety-ſix he departed this life; his ſon Enoch came next, who was born when his father was one hundred and ſixty-two years old; and after three hundred and ſixty-five years he went to God, and was no more ſeen; which is the reaſon that there is no record extant of what

what became of him. Methuſalem was born to Enoch in the hundred and ſixty-fifth of his age; and at the age of one hundred and eighty-ſeven he had a ſon born, which he called Lamech, to whom he delivered up the government that he had held for nine hundred and ſixty-ſix years; but when Lamech had been ſeven hundred and ſeven years in the exerciſe of that power, he transferred his commiſſion to his ſon Noah, who was born to Lamech in the hundred and eighty-ſecond year of his age, and was nine hundred and fifty years in the adminiſtration. So that putting all theſe together, computing upon Noah's age of ſix hundred years at the time of the deluge, it amounts to the juſt number of two thouſand two hundred and fifty-ſix. But we are not ſo much to conſider the end of theſe men, as the birth of them; for they lived to ſee many generations out of their own loins.

Noah lived happily, and at eaſe, three hundred and fifty years after the flood;

ſo that he was nine hundred and fifty when he died.

The patriarchal power continued in Abraham, Iſaac, and Jacob, until the Egyptian bondage; where the exerciſe of the ſupreme patriarchal juriſdiction was intermitted, becauſe they were in ſubjection to a ſtrange prince.

After the return of the Iſraelites out of bondage, God, out of a ſpecial care of them, choſe Moſes and Joſhua, ſucceſſively, to govern as prince, in place and ſtead of the ſupreme fathers.

The name of patriarchs, as long as the firſt fathers of families did live, properly belonged unto them; but, after a few deſcents, when the true fatherhood itſelf was extinct, and only the right of the father deſcends to the true heir, then the title of Prince or King was moſt ſignificant to expreſs the power of him who ſucceeds only

to

to the right of the fatherhood, which his anceſtors did naturally enjoy. By this means it comes to paſs, that many a child, by ſucceeding a king, hath the right of a father over many a grey-headed multitude, and hath the title of *Pater Patriæ*.

Indeed, at firſt, as I ſaid before, kings had no ſuch large dominions as they have now-a-days. Joſephus ſays, that in the city of Sodom itſelf there were five kings, viz. *Ballas*, *Barſas*, *Senabar*, *Symobar*, and the king of the Ballineans; and every king abſolute in his own territory. We find in the time of Abraham, which was about three hundred years after the flood, that in a little corner of Aſia, nine kings at once met in battle; moſt of which were but kings of cities a-piece, with the adjacent territories, as of *Sodom*, *Gomorrah*, &c. Melchiſedec was king of Salem, which was only the city of Jeruſalem. And in the catalogue of the kings of Edom, the name of

of each king's city is recorded, as the only mark to diſtinguiſh their dominions. In the land of Canaan, which was but a ſmall circuit, Joſhua deſtroyed thirty-one kings; and, about the ſame time, Adonibeſec had ſeventy kings whoſe hands and toes he had cut off, and made them feed under his table. A few years after this, thirty-two kings came to Benhadad king of Syria; and about ſeventy kings of Greece went to the wars of Troy. Cæſar found more kings in France than there are now princes there; and at his firſt coming to this iſland he found four kings in Kent. When Henry II. conquered Ireland there were five ſovereignties in the iſland: *Munſter*, *Leinſter*, *Meath*, *Ulſter*, and *Connaught*. Theſe heaps of kings in each nation are an argument that their territories were but ſmall, and ſtrongly confirms our aſſertion, that creation of kingdoms only came at firſt by diſtinction of families.

It may ſeem abſurd to maintain that the fatherhood has not loſt its right of governing, and that kings now are, as they were at the firſt planting and peopling of the world, the fathers of their people or kingdoms, ſince experience ſhews the contrary. It is true all kings are not the natural parents of their ſubjects; yet all kings that now are, or ever were, either were the next heirs or uſurpers of the right of thoſe firſt progenitors, who were at firſt the natural parents of the whole people, and in their right ſucceed to the exerciſe of ſupreme power; for every man is by nature either a king or a ſubject. The obedience which all ſubjects pay to kings, is but paying that debt which is due to the ſupreme fatherhood; for the heirs, or lawful ſucceſſors of the firſt progenitors are, not only lords of their children, but alſo of their brethren, and of all others that were ſubject to their fathers.

If it pleaſe God, for the correction of the prince, or puniſhment of the people, to ſuffer the right heir to be removed and diſpoſſeſſed, and another to be placed in his room, either by the factions of the nobility or the rebellion of the people; in all ſuch caſes the judgment of God, who hath power to give and to take away kingdoms, is moſt juſt: yet the miniſtry of men, who execute God's judgments without commiſſion, is ſinful and damnable. God doth but uſe and turn men's unrighteous acts to the performance of his righteous decrees; and in ſuch a caſe the ſubject's obedience is not due to the uſurper, but to the lawful exiled king, who has a juſt title, and the other an unjuſt poſſeſſion, which obliges him to repentance and reſtitution: and certainly no man can have a true right to what he is bound to reſtore; nor can others be obliged to maintain him in it. Good men indeed ſubmit to a proſperous invaſion as to torrents and inundations, when they cannot be

be reſiſted; but certainly it is a crime of the deepeſt dye for ſubjects to begin a war with their prince, and throw a nation into blood and confuſion. And none can place himſelf on the throne of theſe kingdoms, when others, who have a nearer relation to it by deſcent are living, without much blood and perjury: and I challenge any one to produce a precedent where the true heir hath been laid aſide, where there was not a long chain of wickedneſs, perjury, rebellion, invaſion, depoſition, murder, ſlavery, and oppreſſion: and kings ſet up by faction, without an hereditary title, never anſwered the people's expectations in the preſervation of their laws and liberties.

It is true, indeed, God may and can give kingdoms to whomſoever he will, I know it; he can make a new world on purpoſe for them, or take the forfeiture of the whole, and diſpoſe of his own creation as

as he pleaſes; but then it muſt appear to be his will; and he muſt ſend a new revelation into the world, with ſuch a high-favoured prince, to every man that is to be his ſubject: and this extraordinary revelation ought to be as clear and as diſtinct as Abraham's was for the ſacrificing his ſon; for it is as contrary to all the ſettled rules of right to dethrone a lawful king, as it is to deſtroy an only ſon: and yet the command was only intended as a trial of Abraham's obedience; neither would God ſuffer it, that there ſhould be a precedent of an inhuman ſacrifice in the world, though at his own bidding.

It is not enough for an uſurper to wrong a prince of his crown, but this muſt be hallowed by falſe prophets, and ſaid to be done in God's name; and this proved by no better argument than Mahomet's miracle of ſucceſs and ſettlement. If, therefore, a pretended prophet tells me that I am to own an uſurper as God's choice and

by divine right, and therefore he is no uſurper; I muſt needs anſwer, that the title is far fetched, and comes a great way; therefore I muſt deſire to ſee ſome proof in point, and ſhall always call for miracles for what is ſaid to come from heaven. Shall I believe that Mahomet was a true prophet by his miracle of ſucceſs and ſettlement? No true chriſtian I believe will deſire that; neither will any true chriſtian believe that uſurpation is lawful government, or ought in conſcience to be obeyed, though firmly ſettled: and it is a plain and undoubted uſurpation, without manifeſt revelation from God, confirmed by miracles, to preclude any perſon of the royal family, much more the next heir, from ſucceeding to the crown, to whom alone God hath given it. And uſurpation is of the devil, who is the father, promoter, aſſiſter, and ſupporter of it; and they are his agents and tools who are employed in it; and as they are all of one flock ſo they will at laſt have one fold,

even

even hell; which is the kingdom where rebellion reigns and rebels burn.

The ſpirit of reſiſtance is an unchriſtian ſpirit; it is ſo far from ſavouring of God, that it ſavours ſtrongly of the devil, who fought againſt God; and as it would be an injury that ſuch company in iniquity as rebels ſhould be ſeparated, I verily believe they will reſt together. For if we ought to be ſubject for conſcience' ſake, and if our obligation is bound upon us by the hand of God himſelf, then we may very fairly infer, that both the doctrine and practice of reſiſtance comes from the devil. If that may be truly accounted a deviliſh ſin, which oppoſes God's declared will with reſolution and impudence, then, becauſe rebellion againſt a lawful prince does ſo, we may well reckon it to come from the devil.

Rebellion, and what it drives at, is a Pandora's box, fraught with all ſort of

evils to a nation, worſe than plague, peſtilence and famine; it is ſo heinous a ſin, ſo hateful in the ſight of God and every good man, that it draws an odium upon thoſe that are guilty of it that ſucceeding generations cannot wipe out. When I find God himſelf call it as the ſin of *witchcraft*, which, like it, is ſeldom repented of; for me to ſpeak againſt it, by endeavouring to aggravate the iniquity, would be of ſmall purpoſe to any ingenuous man; yet though hell itſelf will be its reward, it hath not wanted daring and knowing patrons, and it is very remarkable that few of them, very few rebels, ever repent.

Reſiſtance againſt the ſupreme magiſtrate, (under any lawful government) and that even to the wreſting the ſword out of his hands, and aboliſhing the fundamentals of the conſtitution, is, as I ſaid before, according to the dictates of religion, a damnable ſin; and though the adhering to this maxim

maxim ſhould, in the courſe of human revolutions, involve the church and her members in manifold inconveniencies, yet there is no help for it; theſe muſt be borne as well as we can, for chriſtianity is the doctrine of the croſs. Our duty obliges us to a firm reliance on the wiſdom and goodneſs of his providence, however ſurpriſing ſome things may appear, when conſidered ſeparately from the whole, or examined, or judged of by what falls only within our ſhort view and narrow apprehenſion of things. On whom can we more wore wiſely and ſafely rely, than on him who has infinite knowledge to guide, power to protect, and mercy to ſave? therefore let us do our duty, for, in this particular, we can be at no loſs to know it. I know, indeed, no commandments more poſitive than what our bleſſed Lord and his apoſtles have given for our obedience to kings, even to heathen kings; and the command is inforced by the moſt dread-

ful of all penalties, not impriſonment, not confiſcation of goods, not death, but damnation. Where there is a right in the ſupremacy, there obedience in inferiors becomes a duty: and where the ſupremacy is juſt, there ſubjection is neceſſary; therefore it is no hard matter to determine to whom it is that our ſubjection is due; and a revelation ſent on purpoſe from heaven, and preaching from the clouds, in place of pulpits, cannot oblige us to be ſubjects to any uſurper, under that notion; becauſe it is a notion of wrong, and God himſelf cannot make wrong to be right: and our Saviour hath forbid us to give aſſent to any other doctrine but what himſelf hath taught, even though it ſhould be delivered by an angel, and ſure one muſt forget all the Old and New Teſtament, and what is the foundation of both, even the law of moral and natural honeſty, that approves of rebellion; and it is a manifeſt contradiction to ſuppoſe a government not rightful

and

and lawful, and yet allegiance to be due to it; and if an angel was to come down from heaven and preach any other doctrine, if I believed that doctrine, I ſhould think myſelf guilty of a greater tranſgreſſion than that prophet who turned in and did eat bread and drink water with his brother prophet, contrary to God's command.

Shall then a wretch bid us ſwear to be faithful to an acknowledged wrong, and to be falſe to an acknowledged and unextinguiſhed right? for a rightful title is as immovable as the pillars of the earth, and an uſurped crown is a ſtolen crown; it is the crown of blood; and that power which is purchaſed by crimes is ſeldom durable.

Poſſeſſion and providence, the apparent voice of the people, and the undoubted ſucceſs that rebels meet with, are pleas which every ſucceſsful villany may ſet up for its own vindication, and is as applicable in one caſe as

another. Of this we have a ſtrong proof in ſcripture, in the caſe of David; tho' he did what was right in the eye of the Lord, and executed judgment and juſtice to all his people, yet he wanted not an enemy, even of his own blood, to rebel againſt him and uſurp his kingdoms; for Abſalom, his ſon, conſpired againſt him, deluded the people, and ſtole the hearts of the men of Iſrael from their lawful king, and the conſpiracy became ſtrong; for the people increaſed continually with Abſalom, inſomuch that David was forced to eſcape for his life, and the good king wept as he went up, and had his head covered, and he went barefooted, and all the people went with him. This revolution, though in truth a moſt unnatural rebellion, was not without its falſe prophets, who had the impudence to impute it all to God, providence, and the Lord's doing. "*The Lord*, ſaid Shimei, *hath delivered the kingdom into the hands of Abſalom thy ſon.*" And the people's choice

and

and ſubmiſſion was another of his pretended titles, which we may perceive by Huſhai's mentioning that as one of his reaſons for his ſeeming revolt, ſaying, *Whom God, and this people, and the men of Iſrael chuſe, his will be done, and with him will I abide.*

And when David had abdicated, or rather was forced to deſert, his dominions, Abſalom came to Jeruſalem and took poſſeſſion thereof. Nevertheleſs, though we have here an uſurper in full poſſeſſion of the kingdom of Iſrael, from *Dan* even to *Beerſheba*, backed with the pretended titles of providence, and the people's conſent, yet he is never once eſteemed as a king; but his enterprize is, by the Holy Ghoſt, termed conſpiracy, even when it was in its height, and David, though out of poſſeſſion and in exile, is every where acknowledged as the only lawful and rightful king; and as ſuch, afterwards, was his happy reſtoration effected by his own ſubjects,

jects, who, as with one heart, ſent this word unto the king, *return thou and all thy ſervants.*

Thoſe who give right to poſſeſſion, think they have the authority of St. Paul for ſo doing, where he ſays, Rom. xiii. 1. There is no power but of God; the powers that be are ordained, or ſet in order, of God: but they neglect to tell us that St. Paul afterwards adds, He therefore that reſiſteth the power, reſiſteth the ordinance of God, and they that reſiſt ſhall receive to themſelves damnation. If this then be the caſe abſolutely as to all powers that be, it muſt have been a damnable ſin to reſiſt Cromwell; but if it was not, then it neceſſarily follows that St. Paul deſigns only to ſpeak of lawful powers, and not abſolutely of all powers whatſoever. It is true the Engliſh word Power is ambiguous, and ſignifies Dominion, however acquired; but in the original the word is ἐξουσια authority, which

properly ſignifies a rightful power. Accordingly, St. Chryſoſtom, explaining this text, ſays, Οὐ γὰρ ες-ιν ἐξυσία, φησὶν ἐι ὑπο τῦ θεῦ, τι λέγεις, πᾶς ἔν ἄρχων απο τῦ θεῦ κεχειροτονηται; ού τῦτο λέγω, φησὶν. ἀδὲ περὶ τῶν καθέκας-ον ἀρχόντων ὁ λογος μοι νῦν, ἀλλὰ περὶ ἀυτῦ τῦ πράγματος. Τὸ γὰρ ἀρχὰς εἶναι καὶ τὺς μὲν ἄρχειν. Τὺς δὲ ἄρχεσθαι, καὶ μηδὲ ἁπλῶς και ἀγέδην ἄπαυλα φέρεσθαι, ὡσπερ κυματῶν τηδε κάκεῖσε των δήμων περια υομένων, της τῦ θεῦ, σοσφίας ἔργον είναι φημι. Διό τῦτο ἔκ εἶπεν, ού γὰρ, ἐιτιν ἄρχων, είμὴ ὑπο θεῦ, ἀλλὰ περὶ τε πράγματος διαλεγέται λέγων ού γὰρ ἐς-ιν ἐξυσιά, είμὴ ὑπὸ θεῦ. Αἱ δε ὖσαὶ ἐξυσία ὑπὸ θέῦ τεταγμέναι εἰσίν. Οὕτω και ὅταν λέγη τις σοφὸς ὅτι παρα κυρίῦ αρμόζεται ἀνδρι γυνὴ, τῦτο λέγεί, οτι τὸν γαμον ὁ θεὸς εποίησεν, ὀυχ ὅτε ἕκας-ον συνιόντα γυναικὶ αὐτος συγάπτει. Καὶ γὰρ ερῶμεν πολλᾶς ἐπὶ κακῶ, καὶ ὑνομω γαμε συνιόντας ἀλλήλοις, καὶ ἐκ αν τῶ θεῦ τετὸ λογισαιμεσθα. St. Chryſoſt. Homil. 23. in Epiſt. ad Rom. Here St. Chryſoſtom tells us, that government taken in general is indeed from

from God, but ſo is not every government; even as marriage, ſays he, is inſtituted by God, but not ſo is every cohabitation with a woman: as therefore all property is from God, but not ſo if it be obtained by theft; and as the union of man and wife is from God, but not if it be founded in adultery; ſo neither is the relation between a governor and thoſe governed by him, from God, if it be founded upon uſurpation; becauſe though all juſt poſſeſſion is from God, yet unjuſt poſſeſſion is not: and if all, for inſtance, who have poſſeſſed a throne and had been called kings, had had their authority from God, he himſelf would not have complained of the Iſraelites. Hoſ. viii. 4. "They have ſet up kings, but not by me, they have made princes and I knew it not."

We may adore the providence of God without partaking in the injuſtice of men; we may diſcern his permiſſion in all the events

events that happen, and yet diſtinguiſh it from his approbation by his word; when he puniſhes, we may be allowed to treat for mercy, and yet acknowledge that his wrath is juſt: when a plague rages we may pray that it would ceaſe, and yet confeſs that it is the finger of God; and yet in a plague, however deſtructive, there is nothing criminal, as there is in thoſe evils brought upon us by men: plagues, hurricanes and earthquakes are but diſorders in the elements, which blindly obey God, and are not capable of ſin; whereas in uſurpation there is always guilt and perverſeneſs in the will; it is founded in injuſtice, and thrives in perjury, bribery, and oppreſſion. The moſt wicked uſurper is God's inſtrument, yet we may wiſh that the wickedneſs of the wicked may come to an end.

Indeed, if poſſeſſion gives right, and allegiance follows ſucceſs, there is an end of the difference betwixt right and wrong, juſt

juſt and unjuſt: for then Oliver Cromwell, and every other Oliver, who can get into poſſeſſion, would have equal right to our allegiance with the moſt lawful monarch upon earth; and both David and king Charles II. and every other king in their circumſtances, would have been criminal, in endeavouring to obtain the crowns they were formerly poſſeſſed of; and thoſe loyal ſubjects who firmly adhered to their cauſe, and ventured their lives for their ſakes, and in purſuance of their duty, would have been faulty in fighting their battles. But ſuch poſitions as theſe, however modiſh they may be, are ſo directly contrary to the known laws of the land, ſo inconſiſtent with common juſtice and all the rules of right and wrong, and ſo directly oppoſite to the revealed will of God, that the very naming them is ſufficient to ſhew the abſurdity of them. It would be loſs of time to ſpend many words in confuting ſuch extravagant principles, which evidently overturn

turn all diſtinction of right and wrong, and all the rules of juſt and unjuſt actions, agreed on amongſt men, as founded on the law of nature and the eternal difference of things, which are the guides for all mankind in the common intercourſe they have with each other; not to ſpeak of the goſpel prohibitions, not to do evil on any pretence whatſoever.

Suppoſe any man by forcible entry gets poſſeſſion of the manor-houſe, is he therefore lord of the manor? or has he a right to the rents of the tenants? No; it intitles him to nothing that I know of, but to be followed by a writ of ejection. For he that pretends to a power and office which is by law, and which the law does not give him, has it not; but every inch of a king's power is legal, and he muſt come legally by it: he that is not let into the government by law has nothing to do with it; he is a private perſon, as you and I may be.

But

But our Saviour, St. John x. 1. ſays, *He that entereth not by the door into the ſheep-fold, but climbeth up another way*; why, what of him? he is in poſſeſſion, he is a ſhepherd *de facto*; he takes upon him as if he were the true ſhepherd: but what, ſays our Saviour? *the ſame is a thief and a robber*. For this principle, of poſſeſſion giving right, once admitted, there remains, as I juſt now obſerved, no other principle in the world, no right and wrong, no juſt and unjuſt, no robberies, no rebellion; but if you thruſt out a king, no matter how, and refuſe to hear any defence that he can make, his right, and that of all his heirs, is immediately and for ever extinguiſhed, and becomes the right of thoſe who have diſpoſſeſſed him, againſt all right. Poſſeſſion indeed is ſaid to be eleven points of the law; but where is the twelfth, when the point of right is wanting? They are like the verdict of eleven jurymen, for receiving of which king Alfred hanged one of his judges.

judges. Poſſeſſion without right is extremely wicked, and the conſent to wickedneſs extreme iniquity.

We ought not to judge of the juſtice of a cauſe by the ſucceſs of it; leſt what has been done ſucceſsfully ſhould be ſaid to have been done impiouſly and unjuſtly. It is the height of iniquity and injuſtice to weigh actions, and what is lawful, by the ſmiles of fortune, and not by the will of God, the light of reaſon, and the deſign of the undertaker. What elſe is fortune, if we conſider men, but chance? With reſpect to Almighty God it is a very inſufficient argument; a poor ſhift indeed, to infer the juſtneſs of an action from God's ſeeming to bleſs it with ſucceſs: God's judgments are ſecret and unſearchable, and it is he alone that brings good out of evil, light out of darkneſs, and alſo gets glory to himſelf from the worſt deeds of the wicked; as from Lot's inceſt he raiſed up two moſt

powerful nations, the Ammonites and the Moabites; but will any one infer from hence that Lot did rightly? When Uriah was ſlain, Solomon, who was a type of Chriſt, was born of her who had been wife to Uriah; muſt huſbands then be killed that we may enjoy their wives? Jehu, who was captain of the hoſt of Iſrael, killed his maſter and ſeventy ſons of Ahab, as he did Ahaziah and his forty-two brothers; ſhall we therefore affirm it to be lawful for generals of armies to conſpire againſt the life of their ſovereign, and to kill him and all his family? and yet Jehu had great ſucceſs in what he did. Therefore ſucceſs is no argument to prove that a thing is juſtly done. Certainly many things, which have been excellently well inſtituted and ordained, have not been attended with ſuch proſperous ſucceſs as they deſerved; and ſuch things as ſeemed well and wiſely deſigned for our ſafety, become ſometimes hurtful, and fortune has ſmiled upon very impious facts.

facts. The Turks have taken great kingdoms and countries from the Chriſtians; will their great and wonderful ſucceſs juſtify their religion or their cauſe?

To ſay that ſucceſs is a teſtimony of God's providence approving of it, is a poſition of a very dangerous and evil nature, eſpecially becauſe, *firſt*, it is in ſome degree blaſphemous, as if the holy God, who hateth all evil and hath given ſtrict commands againſt it, were to be eſteemed an approver of all the wickedneſs in the world, where he doth not forcibly reſtrain or immediately deſtroy the offender: *ſecondly*, this pretence is greatly oppoſite to the principles of chriſtianity, both in deſpiſing and abuſing the patience and long-ſuffering of God, and in building upon ſuch foundations as can bear no weight, unleſs men overlook and diſregard the future account and puniſhment of another world. There have been inſtances of the moſt pious and worthy princes, as

well as other good men, meeting with many troubles and injuries in this life. Our own age and our own nation can afford us examples which cannot be forgotten, nor yet remembered without indignation: but that which may be truly inferred from ſuch things is, that God doth ſuffer evil actions and injuries to be done for ſome time in this world, and that piety and goodneſs hath a reward beyond this life.

The gods permitting traitors to ſucceed,
Become not parties in an injurious deed.

There is nothing more expreſsly forbidden in the revealed will of God than rebellion; and though God does many times permit thoſe things to be done which he has forbidden to be done, otherwiſe no man could be guilty of any ſin, yet his forbidding of it is a plain argument that he does not approve of it. It is a ſtrange argument, from God's permiſſion of an unrighteous act, to conclude that it is his will

it

it ſhould be ſo; yet it is an old fanatic way of expounding providence: they think that lawful to do which providence gives them an opportunity of doing. Indeed I muſt confeſs it is a pretty little device; yes, Providence, you are a very uſeful thing, which is able to juſtify an action againſt the authority of God's will; when any thing is to be done which is contrary to law and juſtice, and at which conſcience boggles, then becauſe they have a mind to keep friends with God, if he be content with fair terms, they will intitle him, by ſome means or other, to it, ſeeing they would not do it except Providence had led them to it; and this has been, and is allowed for very ſweet and ſound doctrine, that a man may follow Providence againſt a precept.

"Some, ſays Cowley, will ſay, all power belongs unto God, who is the ſource and fountain of it, as kings are of all honours in their dominions. Princes are but his viceroys in the little provinces of the world.

To ſome he gives their places for a few years; to ſome for their lives; and to others he beſtows, as it were, leaſes upon them and their poſterity; for ſuch a date of time is prefixed in that patent of their deſtinies. Neither is it more unlawful for Oliver to ſucceed Charles in the kingdom of England when God ſo diſpoſes it, than it had been for him to have ſucceeded lord Stafford in the lieutenancy of Ireland, if he had been appointed to it by the king then reigning. Men are in both caſes obliged to obey him whom they ſee actually inveſted with authority by that ſovereign from whom he ought to derive it, without diſputing or examining the cauſes either of the removal of the one, or preferment of the other. If theſe be allowed, ſays our old loyal poet, we muſt break human ſociety, retire into the woods, and there equally ſtand upon our guards againſt our brethren mankind, and our rebels the wild beaſts; for if there can be no uſurp-

ation upon the rights of a whole nation, there can be none moſt certainly upon thoſe of a private perſon; and if the robbers of countries be God's vicegerents, there is no doubt but thieves, banditti and murderers, are his under-officers."

"It is true that God is the ſource and fountain of all power, and it is no leſs true that he is the creator of ſerpents, as well as angels, nor does his goodneſs fail of its ends, even in the malice of his own creatures. What power he ſuffers the devils to exerciſe in this world is too apparent by daily experience, and by nothing more than the enormous iniquities committed in theſe nations; but can it be inferred from hence, that the power of the devil is a juſt and lawful one, and that all men ought, as moſt men do obey him? God is the fountain of all power, but ſome flow from the right hand of his goodneſs, and

others from the left hand of his juſtice. If Cromwell had come to the command in Ireland, in place of the late Stafford, I ſhould yield obedience, not for the equipage, the ſtrength, and the guards, but the commiſſion from the ſovereign which ſent him; and if he could have ſhewed one from God Almighty, I would have obeyed him in England; but that he was ſo far from being able to do, that, on the contrary, I read nothing but commands, and even public proclamations, from Almighty God, not to admit him."

We are either obliged to obey the ſovereign by ſome obligation which the laws of God bring on us, or we are not; if not, then all ſacredneſs of authority is gone, and the prince has nothing but force to maintain his right, and every uſurper that maſters him has a better right, by how much more power he has to ſtrengthen his ambitious pretences; but God directs

us

us to meaſure what is juſt and right, not by the power, event, or ſucceſs, but by the rule of his own word. The order, therefore, ought inviolably to be kept, which God himſelf has inſtituted, that is, that all other creatures be ſubject to, and obey man, men to obey their king, and the king to obey God to whom he is accountable; for we have received that form of government, or public adminiſtration, viz. monarchy from the immortal God, as well as our being men, whereby we are fit for ſociety.

To our natural father we are indebted for our being; to the king, the father of our country, we owe our being in civil ſociety. Was ever the father choſen by his children, or is there place for election in families? It is nature that makes them fathers of children, maſters of families, or kings of realms; and as it is unjuſt for the eldeſt ſon, or any of the children, to deprive

deprive the father of his government; ſo it is as unjuſt and rebellious for ſubjects to deprive a lawful ſovereign of his right, and to ſettle a crown by force and rebellion, and to eſtabliſh iniquity by a law: but it is not in the power of all the lawyers, nor even all the lawmakers in the world, to give authority to ſo unrighteous an act, nor to eſtabliſh ſo unchriſtian a conſtitution. Whoever takes up arms for an uſurper, or aſſiſts him with men or money, the ſoldiers that fight for him, the divines that make it goſpel, the gentlemen of the inns of court that make it law, are all involved in the guilt of departing from their allegiance. The crown cannot become the prize of rebellion, and the three kingdoms a reward, due by the laws, to every ſucceſsful uſurpation. If obedience were only due to the prevailing powers, it is but ſhifting the guards, and, in an inſtant, all the people's allegiance bids the king a good night. If allegiance always deſerts the unhappy, and inrolls

inrolls under ſucceſs, the immutable law of nature changes with the wind, and is more imperfect than human law, which never deprives any man of his right, becauſe he is diſpoſſeſſed. Then there is ſurely no right to government at all, nor any true right of inheritance public or private, but every thing is every man's, and right, preſervation, property, are all words without any ſignification.

Mankind, in all ages, have a horror at rebellion; and I verily believe, were men to conſult the devil himſelf, to know what courſe they had beſt take to blaſt the honour of religion, he neither would nor could direct them to a more effectual one, than, under ſanctified pretences, to turn rebels to government.

If people preſume to transfer kingdoms at their pleaſure, and lift up themſelves above their ſovereign lord, and dethrone his

his true and lawful children and heirs, they become not only guilty of ingratitude towards the family of their former kings and the branches of it, but of the greateſt wickedneſs againſt God Almighty, by invading that power which he has reſerved to himſelf; for ſince God is the Lord of the whole earth, he hath a right to govern it, and it is in his power to appoint rulers and magiſtrates, and to command ſubjection to them; and whoever, beſides God, does undertake to confer a power to rule the world, as if it were from themſelves, do thereby put themſelves upon diſpoſing of God's right. For in the book of Wiſdom, chap. vi. 45. both the authority of kings is aſſerted to be from God, and that themſelves alſo are his miniſters. Now, if government be the inſtitution of God, to make forcible oppoſition againſt it muſt either be in deſign to have God's authority ſubject to theirs who ſo act, or at leaſt that themſelves may not be ſubject to it; both which

are

are unreaſonable, and include a reſiſting the ordinance of God.

AGAIN, what manifeſt ingratitude is it to transfer the kingdom from the poſterity of thoſe kings who have deſerved well of the people, and who had, at the expence of their blood, purchaſed the eſtates of each of them to their anceſtors: they outdo the rebels in the Goſpel, St. Math. xxi. 38. who would not ſeize on the inheritance, while the heir was in being. Theſe are, doubtleſs, harſh judges who are far from doing by their ſovereign, as they themſelves and their families would be done by; for they cannot think of ſuffering their own poſterity to be diſinherited, however ill deſerving they are, even of that which they owe to the bounty of their kings; and yet at the ſame time are ready to ſuffer the offspring of their ſovereign lord to be expelled from their parental inheritance, which the laws of God and nature, right reaſon, and human laws founded

founded upon equity, and the ſtatute laws of theſe kingdoms, declare to be their due.

It is moſt unreaſonable to refuſe the common parent of the country that juſtice which is allowed the meaneſt and moſt contemptible wretch amongſt the people. There cannot be an inſtance of greater injuſtice than to rob a man of his patrimony, nor any greater offence againſt God, who has ſo often commanded to give every one his due, to do to others as we ourſelves would be done by, and ſo highly commends juſtice, upon which the law and the prophets do hang, and engages himſelf to revenge all injuſtice and unrighteouſneſs of men; neither can any greater danger threaten a commonwealth than the excluſion of the lawful heir from his right, and the putting another, at the pleaſure and diſcretion of the giddy-headed tumultuous people, in the room of the true heir. But though he may be deprived of actual poſ-

ſeſſion,

ſeſſion, yet the bands of allegiance are inſeparable from the relation of a ſubject, and though the exerciſe of it may be ſuſpended by reaſon of a prevailing force, yet no outward force can abſolutely take it away, or remove it; ſtill it remains virtually in the ſubject, and obligeth to an endeavour of actually exerciſing it, for the advantage of the party to whom of right it is due, and the advancement of the common good thereby, upon all fit occaſions: for the right of blood, or birth, can never be taken away by any civil bond, except in one caſe, this nation has wiſely declared; for there is a vaſt difference betwixt nature and any ſtatute of men, and the ligament between the ſovereign and ſubject cannot be diſſolved without both their deſtructions; and they who attempt to do it, ought to be baniſhed the ſociety of rational men, and be exterminated out of the confines of human nature.

The

The name of king is ſo ſacred, that people of all nations have had it in the greateſt veneration, next to that they paid to the deity they worſhipped; and no reaſon can abſolve ſubjects from their allegiance to their lawful prince, who is no papiſt. Faithful allegiance is due from the ſubject to his natural ſovereign as ſoon as he is born; for he oweth it by birthright, and it is due alſo by the law of nature, which is part of the laws of England, and is immutable and cannot be changed, and is due to the natural perſon of the king, and not to his political capacity only; that is, to the crown, or kingdom, diſtinct from his natural capacity: and this natural allegiance is not to be transferred by the people; if it could, then it may be tranſferred from one to another every hour. Coke tells us, "The allegiance which ſubjects owe to their ſovereigns, by the laws of our country, is inſeparable from every ſubject, for he oweth it by birthright, and

it

it is alſo due by the law of nature, which is part of the laws of England, and is immutable and cannot be changed, and is due to the natural perſon of the king, and cannot be confined to any kingdom, but follows the ſubject wherever he goes." And in another place, he ſays "Allegiance and obedience, is an incident inſeparable to every ſubject, it joins together the ſovereign and all his ſubjects *quaſi uno ligamine*; whoever is born under one natural legiance and obedience owes it by the law of nature to one ſovereign." Sir Francis Bacon tells us, That allegiance is of greater extent and dimenſion than laws or kingdom, and cannot conſiſt merely by the laws; becauſe it began before laws, it continueth after laws, and it is in vigour where laws are ſuſpended and have not their force. The allegiance of ſubjects to hereditary monarchy can no more be ſaid to conſiſt by laws, than the obedience of children to parents. There is, ſays Lord Elleſmere, one to whom al-

legiance is due by all the ſubjects. And ſure I am that no precept, example, or permiſſion in all the bible, can be found to juſtify uſurpation upon the right of kings.

Suppoſe a prince ſhould, by lawleſs violence, take away the inheritance of his ſubjects on account of religion, would it not be thought tyranny and oppreſſion in him? And is it nothing in ſubjects to take away their king's right of inheritance on the ſame account? Is the law a rule to the king, and none to the ſubject? Has every body liberty and property, and a right of inheritance, but the king? Our preſent eſtabliſhed conſtitution anſwers, *yes*; all ſubjects have their right and property from the crown. Sir Edward Coke ſays, That the firſt kings of this realm had the lands in demeſne, and the grand manors and regalities they reſerved to themſelves; and of the remnant, they, for the defence of the realm, enfeoffed the barons of the

realm with ſuch juriſdiction as the Court Baron now hath. And Heal, ſerjeant in queen Elizabeth's reign, obſerves, that all we have is her majeſty's, and ſhe may lawfully, at her pleaſure, take it from us; for ſhe hath as much a right to our lands and goods, as to any revenue of the crown. And we may obſerve likewiſe, that no man holds any lands but under a condition to defend the realm, which will plainly appear when we come to conſider the Feudal Syſtem, in which we ſhall find that the king is the fountain from whom all lands were firſt derived, and to whom they revert upon breach of allegiance. The law plainly declares, that none in the kingdom can have right in himſelf to any land, but only the king in the right of his crown; becauſe all the lands through the realm are in nature of fee, and are held immediately, or mediately, of the crown. Indeed, ſince the law of property has been introduced, one may challenge this or that to be his own, but that

does not hinder his majeſty, when he thinks the public good, or ſafety of the kingdom, requires it, to revive the priſtine right of uſing things as if they ſtill continued in common. This will clearly appear from what follows. All goods, or lands in which nobody has a property, belong to the king as his prerogative royal. The fines, penalties, and forfeitures of all laws are due to the king only; and, were they duly paid, they would make a goodly ſum. No money can be current but by the king's authority, and he may cauſe foreign coin to paſs current. All the gold and ſilver mines fall to the king; and we find that our kings have iſſued out leather, and made it go as current as gold and ſilver. Selden, though he is far from being a friend to monarchy, is forced to confeſs, that Adam, by donation from God, was made the general lord of all things, not without ſuch a private dominion to himſelf, as without his grant did exclude his children; for by

donation

donation and aſſignation, or ſome kind of ceſſion, his children had their diſtinct territories by right of private donation: Abel had his flocks and paſtures for them: Cain had his fields for corn, and the land of Nod, where he built him a city.

It ſeems ſtrange that community of all things ſhould be by the law of nature, of which God is the author, and yet ſuch community ſhould not be able to continue. Doth it not derogate from the providence of God Almighty to ordain a community which could not continue? and doth it not make the act of our forefathers, in abrogating the natural law of community, by introducing that of property, to be a ſin of high preſumption? But ſurely it was a rare felicity that all men in the world, at one inſtant of time, ſhould agree together in one mind, to change the natural community of all things into private dominion; for if but one man in the world

had diſſented, the alteration had been unjuſt; becauſe that man, by the laws of nature, had a right to the common uſe of all things in the world: ſo that to have given a property of any one thing to any one man, had been to have robbed him of his right to the common uſe of all things. But all that believe the creation muſt own, that Adam's government was before any man's property: and the like may be ſaid of Noah. So that there is no need to have recourſe to articles and capitulations with the people, unleſs they can firſt prove the world to be eternal, and men to have ſprung up in ſome rank ſoil, as muſhrooms after a fruitful ſhower. And if property was introduced with the creation, neither the law of nature, reaſon, or juſtice will allow us to endeavour to diveſt the lawful governors of any of their property, right, or authority, any more than they will allow us to take away any man's lawful right and juſt poſſeſſions. For the very

ſame

ſame reaſon that ſupremacy is a right that belongs to kings, ſubjection is a duty that belongs to ſubjects. The laws of nature, reaſon, and juſtice are the laws of God; but it is againſt the law of God, and, in conſequence, againſt an obligation of conſcience, for any man to deny to another his due.

From the ſacred power and royal authority of kings all dignities proceed; all honor and nobility is derived from the king, as the true fountain; he it is that makes the difference between a peer and a beggar. It is not by nature, but by the grace of the prince, who creates honors, and makes thoſe honors hereditary; whereas he might have given them for life only, or during pleaſure or good behaviour. He alſo annexeth to theſe honors the power of having voices in parliament, as hereditary counſellors. And the king hath power not only to confer grace, but alſo

to deliver ſubjects from the reproach of their former miſcarriages. He can pardon treaſons, murders, manſlaughters, or any kind of felony. The regal dignity of a king is the fountain, ſays Coke, from which all other ſubordinate dignities are derived. To this, I believe, nobody will heſitate to give his aſſent after he has read a little farther. All magiſtrates compared to the king are all but private men. If they derive their power from him, they are magiſtrates under him, and out of his preſence; for when he is in place they are but ſo many private men.

Seeing then that all ſubjects have their lands, titles, rights, and properties from the king, is it poſſible to conceive that he who gives right to others ſhould have none himſelf? He does not take away the right of the ſubject, though all right and property belongs to him, but by and according to law; and ſhall the ſubject diſpoſe of the

the crown itſelf contrary to law? No, certainly; a king, who may be juſtly called the father of his country, ought to be to every man dearer and more reverenced than any father, as one ordained and ſent unto us by God.

The ſubject is never to be ſuffered to attempt any thing againſt his prince, how naughty and cruel ſoever he be. Lawful it is not to obey him in things contrary to the laws of God, when we may fly and hide ourſelves from him; but we are to ſuffer ſtripes, yea death itſelf, rather than attempt any thing againſt his life or right. O! how many tyrants would there be, if it were lawful for ſubjects to kill tyrants? How many good and innocent kings would ſuffer as tyrants by the conſpiracy of their ſubjects againſt them? How would good princes be aſſured of their lives, if under colour of tyranny they might be ſlain by their

their ſubjects, by whom they ought to be defended?

Some will ſay, he is a tyrant who does not obſerve the law, and therefore ought to be depoſed: but who ſhall judge whether a monarch has tranſgreſſed his bounds? If the monarch himſelf is judge, then you deſtroy the frame of the ſtate, and make it abſolute; for to confine a monarch to a law, and then to make him judge of his own deviations from that law, is to abſolve him from all laws. On the other hand, if any, or all, of the people may judge, then you put the ſovereignty in the whole body, or part of it, and deſtroy the being of monarchy.

Admit now, for argument's ſake, that the king makes a contract, or paction, with his people, either originally in his anceſtors, or perſonally at his coronation, yet

yet by no law of any nation can a contract be thought broken, except firſt a lawful trial be had by the ordinary judge of the breakers thereof, or elſe every man may be party and judge in his own caſe, which is abſurd once to be thought; for then it will lie in the hands of the headleſs multitude, when they pleaſe to caſt off the yoke of government, to judge and puniſh him by whom they ſhould be judged and puniſhed. But how far kings are tied down by their coronation oath to keep all the laws of their kingdoms, may likewiſe appear by examining the oath which the kings of England take at their coronation. We ſee, in the words of the oath, that the king is required to obſerve, not all the laws, but only the upright, and them with diſcretion and mercy. Now, what laws are upright, and what evil, who ſhall judge but the king; ſince he ſwears to adminiſter upright juſtice, with diſcretion and mercy? So that, in effect, the

king doth ſwear to keep no laws, but ſuch as in his judgment are upright; and thoſe not literally always, but according to the equity of his conſcience, ſeaſoned with mercy.

If a king did ſwear ſtrictly to obſerve all the laws, he could not without perjury give his conſent to the repealing or aboliſhing any ſtatute by act of parliament, which would be very miſchievous to the ſtate. But let it be ſuppoſed for truth, that kings do ſwear to obſerve all the laws of their kingdoms; yet no man can think it reaſonable that kings ſhould be more bound by their voluntary oath, than common perſons are by theirs. Now, if a private perſon makes a contract either with or without oath, he is no further bound than the equity and juſtice of the contract ties him; for a man may have relief againſt a promiſe, if either deceit, error, force, or fear induced him thereto; and I ſee no reaſon to deny the king

king a privilege which the meaneſt ſubject enjoys.

If it be tyranny not to obſerve the laws, then all courts of equity, and pardons for offences, muſt be taken away; but there can be no ſuch tyranny in the world as law, if there were no equity to abate the rigour of it; *ſummum jus eſt ſumma injuria.* If the penalty and forfeiture of all laws ſhould ſtill be exacted by all kings, it would be found that the greateſt tyranny would be for a king to govern according to law; for it is a great happineſs to a kingdom not to be governed by laws only.

Again, as to perſonal defects, or incapacity in a king, be it in the higheſt degree; as madneſs, lunacy, infancy, or negligence; they afford no matter of defence in treaſon, for, whatever the reſiſters ſay, the law ſays there can be no ſuch thing; for if human infirmity may in ſuch caſes be

be alleged, all people will pretend it to ſerve the turn of their ambition. But the laws own no miſchief to a people in general, or particular ſo conſiderable, as to be put in the ſcales againſt high treaſon. If the king, tranſgreſſing and breaking his truſt, tyrannizes and offends againſt all the laws of natural juſtice, common ſenſe and equity, then he is anſwerable for ſuch wrong uſe of the power, but to whom? Not to his ſubjects, but to God alone; for if they are to be his correctors, they that inſtant become the legiſlative power, and then we are where we were before. In ſhort, it is abſolutely impoſſible to order affairs ſo, but whoever hath power to do right, hath of conſequence power to do wrong; and if reſiſtance be introduced upon a ſuppoſal of the undue and improper uſe of regular power, they declare plainly, that there can be no government nor diſtributive juſtice at all in the world.

If

If a ſubject reſiſts a lawful prince, though he is ſuppoſed to do him an injury, in the firſt place, he takes upon him to judge in his own caſe; but all wiſe men, with one conſent, have condemned the juſtice of it. Again, he that reſiſts a prince on ſuppoſition that his government is unjuſt, is ſo himſelf; for, by ſo doing, he uſurps to himſelf that juriſdiction which of right belongs to another; and as injuſtice is a breach of God's laws, and by conſequence a breach made upon the obligations of conſcience, then let him make what pretences he will, and colour his black deeds with fair ſhew and plauſible deſigns, yet when all is done, till he can make it appear that it is lawful for him to do evil that good may come of it, he will never be able to vindicate himſelf from the violation of God's law, nor the obligation of juſtice and conſcience; and, therefore, notwithſtanding the injuries of the prince, he muſt ſtand a convicted criminal, and his rebellion will be a damnable

able ſin; and he, and whoever are his accomplices, reſiſt God's ordinance, and procure damnation to themſelves by the juſt judgment of God, whoſe laws and ordinances they preſumed to overturn and aboliſh; that is the juſt puniſhment that awaits that crime. And not only reſiſting kings, but alſo the reſiſting ſubordinate rulers ſent by them, whether good or bad, is to be eſchewed, unleſs we are reſolved to oppoſe the laws of Almighty God. For the king in his kingdom is the ſame as the ſun in the heavens, the father in his family, the general in his army, the ſchoolmaſter in his ſchool, or the captain in his ſhip.

The beginnings, indeed, of rebellion look ſpecious, the progreſs is full of miſery and trouble, and the iſſue diſmal; and paſt miſeries ſeem light when compared with the preſent.

When either the caprice of the furious multitude, or the humour, perhaps, of ambitious

bitious nobility, adminiſtering occaſion and encouraging them to ſhake off their kings, the people refuſe to obey, and then abdicate their lawful kings, the nation muſt unavoidably fall into intolerable calamities, inſtead of thoſe moſt certain advantages which formerly they enjoyed ſecurely.

He is a notorious fool, that thinks that a man may be a martyr for his country by being a traitor to his prince.

The pretences that factious and ſeditious people generally uſe, are, that the government invades the property of the people by illegal impoſitions of burdens upon them; that the laws and cuſtoms are altered; that there is innovation in religion; that unworthy perſons are advanced, who promote oppreſſion and arbitrary rule; and when once they have perſuaded themſelves into a belief that ſuch and ſuch actions have a tendency to deprive them of their

properties, privileges, and liberties, their jealouſies then hurry them into all the acts of rage and madneſs, which prove ſo fatal to kingdoms; for when the rabble once feels their ſtrength, and finds the reins looſe on their necks, they become ungovernable, wild, and untamable: the hard-mouthed creature deſpiſes the bitt, and caſts the rider, though it is their certain fate to be mounted by a much greater oppreſſor, that ſo jades them that they are bleſſed if they may obtain the benefit of their former deſpiſed maſter's rule.

It were well if kings were as much above other men in ſovereign virtues and endowments as they are in place and authority, but we find them obnoxious to failings and ſingularities; ſo no man, however loyal, accounts them infallible, as the fooliſh people, for the moſt part, expect they ſhould be; but then kings are God Almighty's vicegerents, and with all their

failings and infirmities have a clear right to the ſubject's duty and obedience, ſeeing the laws, as well of God as man, have declared againſt all oppoſition by force, upon any pretence whatſoever. If he that reſiſteth the power, reſiſteth the ordinance of God, and they that reſiſt ſhall receive to themſelves damnation, how can a man be guiltleſs that draws and uſes his ſword, without authority from him to whom the *jus gladii* belongs? much more if he uſes it againſt them who only hath the authority of the ſword.

It is a villanous crime in ſubjects to rebel even againſt tyrants and wicked princes, or to ſtretch forth their hands againſt them; for, thereby, they become guilty of the moſt grievous crime, the reward of which, if not timely repented of, will be eternal damnation. The Jews cried againſt our Saviour, Crucify him, crucify him; Cora and his company cried, Stone him,

ſtone him, take away this tyrant, and ſet the people at liberty from the unmerciful oppreſſions that this man lays upon us.

Tyranny is always the word in factious and ſeditious mouths; but even tyrants are ſometimes appointed to puniſh the ſins of the people; at other times God ſends peſtilence, famine, and the ſword, to chaſtiſe and reſtrain people when they come to be wanton. We are not, I confeſs, to ſeek the croſs, yet we are not to go out of God's way to ſhun it; we muſt be content to ſuffer perſecution, rather than ceaſe to live godly and honeſtly in this preſent world. It is not only the law of nature, but alſo oftentimes repeated amongſt the laws of God, that we ſhould be obedient to the law of ſuch princes as it hath pleaſed God to ſet to rule and reign over us, if the laws be not directly repugnant unto the laws of God, whereunto all princes are bound.

Our

Our Saviour's religion begets in men the moſt gentle, meek, patient, and governable ſpirits, and is ſo far from being inconſiſtent with loyalty to our prince, that it is the greateſt tie and obligation to it in the world, and there is none can throw off his allegiance towards his earthly ſovereign, but at the ſame time he renounces all duty and conſcience towards God.

The king has no more but a moral obligation to obſerve the laws, but if he will be a tyrant, and act illegally, our old lawyer Bracton ſays, it is ſufficient for his puniſhment, that he hath God for his avenger; for no man muſt diſpute againſt what he ſays or does, much leſs oppoſe or reſiſt him. There is not any bond for a ſovereign prince to keep the laws more than ſo far as right and juſtice require. The father of a family governs by no other law than by his own will, not by the laws and wills of his ſons or ſervants. There

is no nation that allows any action or remedy for being unjuſtly governed, and yet for all this, a father is bound by the law of nature to do his beſt for the preſervation of his family; but much more is a king always tied by the ſame law of nature to keep this general ground, that the ſafety of the kingdom be the chief law.

The king is bound in juſtice and equity, and for example's ſake, to obſerve the laws; but if he will lay aſide all conſcience and the fear of God, his only ſuperior, the right of ſovereignty ſecures the tyrant, as well as the good king, from reſiſtance: he is abſolute in abſolute governments, of which we are now ſpeaking; therefore hath he the title of God's Vicar upon earth, God's Lieutenant, Pater Patriæ, &c. Self-defence is then only lawful to be maintained by force when it may be done by lawful means, without tranſgreſſing any neceſſary duty to God or man; it is therefore juſt-

ly

ly allowed, ſo far as is neceſſary, againſt private violence and aſſaults, being there warantable by the rules of right reaſon and good conſcience, which are the laws of our nature; but to allow a right of ſelf-defence to every man, is as much as to ſay, that no man is bound to own the ordinance of God in the world, or to ſubmit himſelf and his intereſt to be governed by any civil power.

If the king will pervert the great ends for which God made him king; if he will not act as becomes God's vicar; if he will obſtruct or pervert the laws, and govern tyrannically, yet there is left no remedy to his ſubjects by the law but tears and prayers; for the laws imperial of this realm of ancient date, as we ſhall ſee by and by, have formerly declared the king to be a free, unconditional, and independent ſovereign, and exempted him from all action and force.

The reaſon why a king cannot be puniſhed is, not becauſe he is exempted from puniſhment, or doth not deſerve it, but becauſe there is no ſuperior to judge him, but God, alone to whom he is referred. If the king does any thing wrong, the ſubject is to beg for redreſs by petition, which if he will not hear, it is a ſufficient penalty for him, that he is to expect puniſhment from the Lord.

Among the many ſecurities the ſubjects have, though they may not take arms againſt their ſovereign, this is none of the leaſt, that God is the judge and governor of the world. Shall it be thought a ſufficient reſtraint to the exorbitancy of a father's power over his children, that, if he becomes unnatural, the earthly judge can both vindicate them and puniſh him, though children be not allowed, when they think fit, to beat and kill their father? And ſhall not the judgment and authority of God over princes

princes be thought valuable and conſiderable, when he is more righteous, and more able to help the oppreſſed, than any other judge upon earth. If ever it be our misfortune to live under an unjuſt prince, we ought to embrace the temper of David's ſpirit, in his words concerning Saul, 1 Samuel xxvi. 10. 11.

Many are ready to ſay, that it is a ſlaviſh and dangerous condition to be ſubject to the will of any one man, who is not ſubject to the laws; but ſuch men conſider not that the prerogative of a king is to be above the laws, for the good only of them who are under the laws, and to defend the people's liberties; and, indeed, the caſe of the ſubject would be deſperately miſerable without it.

Nay, ſome are ſo bold as to ſay, that to make a king by the ſtandard of God's word, is to make the ſubjects ſlaves for conſcience ſake; a hard ſaying! and I doubt whether ſuch

ſuch a cenſure can be excuſed from blaſphemy. It is a bold ſpeech to condemn all the kings of Judah for tyrants, or to ſay all their ſubjects were ſlaves. Bracton tells us, "That all are under the king, and he under none but God only; if he offend, ſince no writ can go againſt him, the remedy is, by petitioning him to mend his fault; which if he ſhall not do, it will be puniſhment ſufficient for him to expect God as a revenger: let none preſume to ſearch into his deeds, much leſs oppoſe him." It is not, indeed, right for kings to do injury, but it is right for them to go unpuniſhed by the people if they do it; and ſubjects muſt in all things obey him, except the laws of God forbid it; for there is no other law but God's law to hinder their obedience.

There are ſome that ſay, that the firſt invention and inſtitution of laws was to bridle and moderate the over-great power of

of kings; but the truth is, laws were firſt deviſed for the eaſe of kings: a proof unanſwerable for the ſuperiority of princes above laws, ſeeing there were kings long before there were any laws.

For a long time the word of a king was the only law; and that which gives the very being to a king, is the power to make laws: without this power he is but an equivocal king, and there is no ſovereign majeſty in him; and if the nature of laws be adviſedly conſidered and weighed, the neceſſity of a prince's being above them will be manifeſt.

We all know that a law is the command of a ſuperior in power; for there cannot be laws without a ſupreme power to command or make them. In all governments that ever were, or can be, the ſupreme power, wherever it is lodged, is, and muſt be, uncontroulable and irreſiſtible: that is a truth included

included in the notion of authority or power; ſo as, the one granted, the other follows as plainly as two and three make five. Government reſiſtible is no government, and thoſe who ſay the contrary are no more to be talked to than ſceptics in philoſophy. If any man finds us out ſuch a kind of government, wherein the ſupreme power can be without being free from human laws, he ſhould firſt teach us that; but if all ſorts of popular government that can be invented, cannot be one minute without an arbitrary power freed from all human laws, then we may ſafely infer the abſolute neceſſity of an uncontroulable power lodged ſomewhere in a ſtate. The laws, indeed, in any kind of government, in time of peace, may govern, and each magiſtrate may diſcharge his duty and ſee the laws put in execution, without knowing where the ſupreme uncontroulable power is lodged; but immediately when that ſcene changes, and wars, rebellion, invaſions, &c. take place of the quiet

quiet and peace which the kingdom enjoyed before, then they find a neceſſity to ſeek for and apply to the ſupreme, abſolute, uncontroulable power for relief and direction. And, upon duly weighing the ſubject, you will be forced to confeſs that it is impoſſible for any government to be in the world without any arbitrary power. It is not power except it be arbitrary. A legiſlative power cannot be without being abſolved from human laws; neither can it be ſhewed how a king can have any power at all but an arbitrary power. The laws, as I ſaid before, may govern and direct people in time of peace and quiet, when nothing oppoſes the execution of them; but theſe very laws can neither be made nor revoked but by a ſupreme uncontroulable power.

Kings moſt certainly were before all laws, which were deviſed by them purely for their own eaſe. When kings were either

either buſied with wars or diſtracted with public cares, ſo that every private man could not have acceſs to their perſons to learn their wills and pleaſure, then of neceſſity were laws invented, that ſo every particular ſubject might find his prince's pleaſure decyphered to him in the tables of his laws; that ſo there might be no need to reſort unto the king, but either for the interpretation or mitigation of obſcure or rigorous laws, or elſe in new caſes, for a ſupplement where the law was defective. By this means both king and people were in many things eaſed: firſt, the king, by giving laws, doth free himſelf of great and intolerable troubles, as Moſes did himſelf by chuſing elders; ſecondly, the people have a law as a familiar admoniſher and interpreter of the king's pleaſure, which, being publiſhed throughout the kingdom, doth repreſent the preſence and majeſty of the king; for as he himſelf is to deliver juſtice to all his people, and as he cannot,

in

in perſon, do it to all his ſubjects, he delegates his power to his judges, who are his miniſters; by which delegation his majeſty's power and will is conveyed to every place where the virtue of it is extended, by publiſhing laws which are to be the rule for the inferior magiſtrates to walk by; ſo the judges and magiſtrates, whoſe help in many caſes in giving judgment kings have need to uſe, are reſtrained, by the common rules of law, from uſing their own liberty to the injury of others, ſince they are to judge according to the laws, and not follow their own opinions. Joſephus, in his anſwer to Apion, ſays, that the very name of laws was not known in the world for many ages; and Homer himſelf wanted a word for it. The people in thoſe days were not governed by written precepts, but by the abſolute will and pleaſure of kings; and ſo it held a long time by authoritative orders, and proviſions to anſwer the occaſion; and ſtill not only the legiſlative

power

power itſelf, but the very exerciſe of the power alſo, is in the king alone; for he can by edicts and proclamations provide for all neceſſary occaſions and ſpecial emergencies not provided for by fixed laws; which is one of the moſt excellent and eminent acts of the legiſlative power, and a ſufficient remedy againſt all miſchiefs, in caſe the two houſes ſhould refuſe to concur with him in thoſe things which concern the benefit of the kingdom.

Now albeit kings who make laws be above the laws, yet will they rule their ſubjects by the laws, and frame all their actions accordingly, though they are bound thereto only out of their own good pleaſure and for good example, or ſo far forth as the general laws of ſafety of the commonwealth doth naturally bind them; for in ſuch ſort only poſitive laws may be ſaid to bind the king, not by being poſitive, but as they are naturally the beſt or only means

for

for the preſervation of the commonwealth. By this means are all kings bound to preſerve the lands, goods, liberties, and lives of all their ſubjects, not by any municipal laws of the land, but the natural law of a father, which binds them to ratify the acts of their forefathers and predeceſſors, as neceſſary for the public good of their ſubjects.

The laws, ordinances, letters patent, and eſpecially privileges and grants of princes, have no force but during their life, if they be not ratified by the expreſs conſent, or at leaſt by the ſufferance, of the following prince, who had knowlege thereof. No man can ſay that, during the reign of queen Elizabeth, king Henry VIII. or Edward VI. governed, although many of the laws that were made in thoſe two former reigns were obſerved and executed under her government; but theſe laws, though made by her predeceſſors, yet became the laws of

her preſent government, who commanded the execution of them, and had the ſame power to correct, interpret, mitigate, or abrogate them which the makers of them had. Every law muſt have ſome preſent known perſon in being, whoſe will it muſt be to make it law for the preſent, and without whoſe good will it cannot be law. And if a king be exempted from the laws of his predeceſſors, much leſs ſhall he be bound by the laws he makes himſelf; for a man will receive a law from another, but impoſſible it is in nature to give a law to himſelf. The law ſaith, *Nulla obligatio conſiſtere poteſt quæ a voluntate promittentis ſtatura comeat.* The ſovereign prince may derogate from the laws which he has ſworn to keep, if the equity thereof be ceaſed, and that of himſelf, without the conſent of his ſubjects.

By the ſufferance of the kings of England controverſies between him and his people

are ſometimes determined by parliament, and ſometimes by the lord chief juſtice of England; yet all the eſtates remain in full ſubjection to the king, who is no way bound to follow their advice, nor conſent to their requeſts.

The king is *caput principium & finis legum & parliamenti.* To the authority of law and the conſtitution of a lawful parliament is required a lawful king; and the want of the laſt is the nullity of the firſt, becauſe without the ſecond the firſt cannot have exiſtence. The king is the life, ſoul, and fountain of all laws, without whoſe royal authority they are a dead letter, of no obligatory force: the two houſes of parliament may agree amongſt themſelves in their votes, yet, without the royal aſſent, it ſignifies nothing; and the ſubjects are as little bound to it as if it had never been. The king alone has the power of making laws; and as there never was, nor can be, a peo-

ple governed without a power of making laws, and as every power of making laws muſt be arbitrary, (for to make a law by a law is a contradiction) therefore the king muſt be arbitrary.

It is generally believed that, in a democracy, the ſupreme or arbitrary power of making laws is in the multitude; in ariſtocracy, the legiſlative or arbitrary power is in a few of the nobility; therefore, by neceſſary conſequence, in a monarchy the ſame legiſlative or arbitrary power muſt be in one. This ancient doctrine of government, in theſe dregs of time, has been ſtrangely reverſed by the Romans on one hand, and the enthuſiaſts on the other: monarchy has been, as it were, crucified between two thieves, the *Pope* and the *People*; for the very arguments which the papiſts made uſe of for the power of the Pope above Kings, the very ſame (blotting out the word Pope and inſerting the word People) our

our enthuſiaſtic common people take up to uſe againſt the ſovereign.

Again, the laws of themſelves are dumb; therefore ſome one or other muſt be entruſted with the application of them to particulars, and by examining all circumſtances to pronounce when they are broken, and by whom. This work of the right application of laws is not a thing eaſy or obvious for ordinary capacities, but requires profound abilities for ſearching out of the truth: witneſs the diverſity, and ſometimes contrariety, of the ableſt judges in ſome difficult caſes.

Seeing this is the condition of laws, it is moſt reaſonable that the law-maker ſhould be truſted with the application and interpretation of the laws; for all judgment is by and under the king: it cannot be without him, much leſs againſt his approbation. The king alone, and none but he,

if he were able, ſhould judge all cauſes; and for this reaſon the kings of this land anciently ſat perſonally in courts of judicature, and are ſtill repreſentatively preſent in all courts: the judges are but ſubſtituted and called the king's juſtices, and their power ceaſeth when the king is in place.

It falls out in the actual adminiſtration of government that, by reaſon the perſon inveſted with the power cannot act all things directly, the buſineſs is diſtributed in divers manners, according to the policy of the ſeveral ſtates, to anſwer the ends of government; for the making, judging, and executing laws; for puniſhing, defending, compelling, reſiſting, and the like; and theſe ſubdivided offices, or branches of power, are committed to different perſons, as the laws have provided; and then all thoſe perſons and authorities become parts of the ſupreme power in their reſpective provinces;

provinces; and as the whole ſupreme power is, ſo are they, in their proper juriſdictions, irreſiſtible by law, upon any pretence whatſoever.

Theſe conſiderations reflect violently upwards upon the ſupreme power itſelf; for if the derivatives in their offices may not be reſiſted on any pretence, how comes the principal or ſupreme in the execution of the whole power to be reſiſtible by force?

The ſupreme power, it is very true, is ſubject to rules or law; for there is not, nor can be, any power upon the face of the earth above or without law. Supreme governors have the ſame relation to God as ſubordinate magiſtrates have to their ſovereign princes. In all lawful governments the authority is received from God, as much as if thoſe kings had been anointed by prophets: they are employed and entruſted by God, and, accordingly, he expects ſub-

jection to them as to himſelf, that we ſhould honour and ſerve them according to that high divine character they bear: he takes what is done againſt them as done againſt himſelf; whoſoever reſiſteth the power reſiſteth the ordinance of God; and to oppoſe and take off their government, to plot and conſpire againſt their life, is to rebel againſt God; and when we will not ſuffer our lawful ſovereign, whom the Divine Majeſty hath appointed to rule over us, we do, by juſt conſequence and fair interpretation, endeavour what we can to dethrone God himſelf, and prove traitorous, not only againſt our natural lord and king, but againſt the heavenly monarch himſelf, by whoſe commiſſion he reigns.

If we are bound in conſcience to be ſubject to the higher powers, and if ſuch obligation comes only from God, then we do infer that no lawful authority can be founded on mere outward force; for if

mere

mere outward power can inſtate a man in a juſt title to the ſupremacy, then it will follow, that whoever has power enough to invade the throne, has right enough to poſſeſs it; and his uſurpation will therefore become lawful, becauſe his ſtrength hath made it poſſible: and ſo at length the robber's ſword and piſtol will come to be the only ſtandard of juſtice; all other power muſt be cancelled, and we muſt come at laſt to make the power of doing wrong to be the only meaſure of equity and right.

All theſe things, at leaſt, are true when there is any perſon in being to whom the title or ſucceſſion belongs; and therefore the greateſt argument that is brought to vindicate the uſurpation of ſucceſsful rebels, namely, that the people were not bound to adhere to their prince when he is diſabled to defend the people, ſuppoſes no other obligation upon ſubjects than mere intereſt, and ſo evacuates and makes null

all

all obligations of conſcience, that people may rebel, or withdraw their allegiance, when their intereſt ſeems to require it; and a king becomes not only ſubject to the law, but is likewiſe at the mercy of the fluctuating unſettled opinion and caprice of the multitude.

Indeed I confeſs, as I ſaid before, that there is no power upon the face of the earth above or without law; for where none are declared, and there is no ſuperior to exact acts, yet the law of natural juſtice and equity prevail; and ſo the deſpotic ruler is tied up as much to the law, in duty and conſcience, as any ſub-governor is, who by his commiſſion is reſtricted to rules. But this duty of all governments doth not impeach the notion of ſupreme, whether it be declared, or reſts in the mind by nature: either is without coercion, and equally obligatory.

If coercion be ſuppoſed, as I ſaid before, then the power that coerceth takes the place of ſupreme, which is to ſet power over power; for that which hath the coercion of others muſt be incoercible itſelf; and if there be any power to which princes are accountable within their own dominions, let their names ſound ever ſo big, they are not ſovereign, but ſubject. Sovereignty, as the very notion implies, being ſuch a pre-eminent juriſdiction, as makes all other perſons within the confines of it accountable to it, but it, or the perſon inveſted with it, accountable to none. For if, in any government, there were a power which had authority to compel or puniſh a ſovereign, for this very reaſon he would not be ſovereign, but a ſubject to that power. The ſupreme power indeed is as much bound to common equity and juſtice in every public act, as a private man is obliged to common honeſty; and he that ſays ſuch powers do no injury, though their act is

moſt

moſt unjuſt, becauſe they cannot be contradicted, muſt at the ſame time allow, that a private man that breaks a ſecret truſt or kills his father, there being no evidence to check or convict him, is a very honeſt man, and hath done no wrong. Kings may break all the commandments of God, as well of the firſt as ſecond table, as any private perſon; but the having power ſo to do is ſo far from being an excuſe for doing wrong things, that it aggravates them: a common thief has more to ſay for himſelf, than an oppreſſor or murderer by power which cannot be coerced.

Seeing magiſtrates in a kingdom are only the king's delegates, to whom alſo they have ſworn allegiance, it is abſurd to ſay that they have any juriſdiction over him from whom they have their commiſſion, and to whom they owe their being magiſtrates; and when he ceaſes to be king they ceaſe to be judges. For upon the

death of any king of England, by whoſe authority and in whoſe name the laws are adminiſtered, all actions, ſuits, &c. which were depending in any of the king's courts of judicature are diſcontinued, and the parties put off, ſo that the plaintiffs are compelled to begin their actions again; becauſe all commiſſions expire with the king, and conſequently the courts of judicature are deſtitute of judges to preſide over them, and proper officers wanting upon whom the execution of writs and orders depends.

As the laws are primarily and properly made by the king, ſo he hath, out of his royal bounty, given authority to the two houſes to aſſent or diſſent: they enjoy a co-operation, but no co-ordination, of power; yet the power that makes the law, the authority that animates it, and makes it differ from a dead letter, is the king; who is the ſpirit and ſoul of the law, and by

by whoſe authority alone the laws command, forbid, vindicate, and puniſh tranſgreſſors; for the breach of any ſtatute, whether it be by treaſon, murder, felony, perjury, or by any other way, is an offence againſt the king's authority alone; and pleas made againſt ſuch offences are called the pleas of the crown, becauſe they are done againſt the crown and dignity of the king: ſo that it is not the dignity and authority of the lords and commons which is violated, but the dignity and authority of the king; for the king of England had formerly none to ſhare with him in the ſovereignty, but all power and authority was derived from him, like light from the ſun; in him alone it was radically and originally placed; he had no ſharers or copartners in the ſovereignty, none co-ordinate with him in the government, no equal, no ſuperior, but God only, to whom alone he is ſubject. All princes as well as people are ſubject unto the laws of God; neither is it

in

in their power to impugn them, if they will not be guilty of high treaſon againſt God; under the greatneſs of whom all monarchs in the world ought to bow their heads in all fear and reverence. Bracton, who wrote in the reign of Henry, ſays, *Omnes quidem ſub Rege et ipſe ſub nullo ſed tantum ſub Deo: non parem habet in regno ſuo.* And afterwards, *Ipſe autem Rex non debet eſſe ſub homine ſed ſub Deo.* So the ſtatute of Præmunire, 26 R. II. c. 5. declares that the crown of England hath been ſo free at all times, that it hath been in no earthly ſubjection, but immediately ſubject to God, in all things touching the regality of the ſame crown; and in 26 Hen. VIII. c. 21. the parliament, directing their declaration to the king, enacted and declared, That this your grace's realm recognizes no ſuperior under God, but only your grace hath been, and is free from ſubjection, &c.

The

The king of England was free from all coercion: the very moment coercion is granted over the king, the government is diſſolved, and our conſtitution broke; for coercion over the crown is a contradiction; it is then no crown, but the ſubjects are the crown, and the crown is ſubject.

And, leſt any perſon ſhould think kings and princes were, without either the countenance of reaſon or religion, the authors of theſe laws, the more ſtrictly to provide for their own ſafety and honour, let us ſee the laws and examples of the holy ſcriptures. Nebuchadnezzar, king of Aſſyria, with fire and ſword deſtroyed all the country of Paleſtine, beſieged Jeruſalem, took it, robbed and razed it down to the ground; burnt the temple, and defiled the ſanctuary of God; ſlew the king, with the greateſt part of the people, carrying away the reſt into captivity into Babylon; cauſed the image of himſelf, made in gold, to be ſet up in a public place,

place, commanding all men to adore and worſhip the ſame, upon pain of being burnt alive, and cauſed them who refuſed ſo to do to be caſt into a burning furnace; and yet for all that the holy prophets, directing their letters to their brethren the Jews then in captivity in Babylon, will them to pray unto God for the good and happy life of Nebuchadnezzar and his children, and that they might ſo long reign over them as the heavens ſhould endure: yea God himſelf doubts not to call Nebuchadnezzar his ſervant, ſaying that he would make him the moſt mighty prince of the world; and yet never was there a more deteſtable tyrant than he, who, not contented to be himſelf worſhipped, cauſed his image alſo to be adored, and that under the penalty of being burnt alive.

We have another rare inſtance of Saul, who, poſſeſſed with an evil ſpirit, cauſed the prieſts of the Lord to be, without juſt

cauſe, ſlain, by whom he had got ſo many victories; at which time he himſelf twice fell into the hands of David, who was blamed by his ſoldiers that he would not ſuffer his ſo mortal enemy, though in his power, to be ſlain; being in aſſured hope to have enjoyed the kingdom after his death, he deteſted their council, ſaying, *God forbid that I ſhould ſuffer the perſon of a king, the Lord's anointed, to be violated.* Yea, he himſelf defended the ſame king while he was perſecuting him, whereas he commanded the ſoldiers of his guard, overcome by wine and ſleep, to be waked. And when Saul was ſlain, a ſoldier, thinking to do David a pleaſure, preſented him with Saul's head; but David cauſed the ſame ſoldier to be ſlain, ſaying, *Go, thou wicked man, how durſt thou lay thy impure hands upon the Lord's anointed? thou ſhalt ſurely die.* And afterwards, without diſſimulation, mourned himſelf for the dead king. All which is worth good conſideration; for

David

cannot be without judging him who hath no ſuperior on earth to judge him, and therefore muſt be preſumed innocent, tho' never ſo guilty, if he cannot be lawfully heard; for in the eye of the law all men are innocent, till legally convicted.

Some people make religion a pretence for their rebellion, but methinks it is a dangerous way for men to rebel to ſave their ſouls, when God has threatened damnation againſt thoſe that rebel; and I believe it to be a juſt and true obſervation, that nobody fights for religion that has any. The devil of rebellion, (as our late martyred ſovereign, of bleſſed memory, from too dear experience obſerves,) who comes transformed in the ſhape of an angel of reformation, is always moſt dangerous; and where piety and conſc[illegible] are drawn into the compan[illegible] thou[illegible] are both but perſonated [illegible] never be wanting an u[illegible]

follow, ſupport, encourage, and aſſiſt ſuch bewitching pretences; and they will arrive at ſo thorough godly a reformation, that they can part with their bibles as well as hereditary monarchy without a grudge: they will enſlave themſelves for the ſake of liberty; be undone for the public good, and deſtroy themſelves with the deſigns of reformation. But I declare myſelf an eternal enemy to that religion which can conſecrate ſacrilege, hallow rebellion, and ſanctify rapine and injuſtice; nor will I ever have any communion with thoſe men who patronize the moſt infamous traitors and murderers for ſaints, and condemn the beſt of kings for malefactors. I do not ſee but, by the theorems of this Jewiſh divinity, Barabbas might have been ſainted, and Chriſt rewarded for an impoſtor. If I imagined there was any ſuch blemiſh, or defect in the proteſtant religion, that the divine author of it would not preſerve it without my renouncing my king, and ruining

ing my country for its ſupport, I would be aſhamed to profeſs it any longer. But Religion has always its handmaid Loyalty to accompany it; they are inſeparable, for no chriſtian can be a rebel, and no rebel a chriſtian: Accordingly we find *Tindal*, *Toland*, and *Gordon*, the author of the Rights and the Independent Whig, theſe true diſciples of *Spinoſa*, *Hobbes*, *Milton*, and *Shafteſbury*, at the ſame time that they were poiſoning the world by writing and printing their vile books and pamphlets, impugned the miracles of Moſes and Chriſt, and the truth of all religion.

Almighty God often contrives men's puniſhments ſo as that they may read their ſin in them. Thoſe revolutions that were brought about, under the ſpecious pretence of preſerving religion, thoſe very revolutions have given a deadly blow to religion; not only to the practice, but to the very profeſſion of it. Infidelity and profaneneſs

have grown ſo faſt of late, that if there comes no ſtop to them, we have reaſon to fear the very name and profeſſion of chriſtianity will ſoon be loſt and forgotten in our guilty land.

Let us therefore beware; for no reaſon, no grimace, or cant contrived to amuſe and ſtir our paſſions, is ſufficient to juggle and cheat us out of our duty.

Our bleſſed Saviour, who had ſo great a regard for government, and for the good of mankind, for which government was ordained, abſolutely forbids ſubjects to reſiſt their ſovereign; and becauſe he foreſaw that the pretence of religion would be of all others the moſt popular and ſpecious, therefore took he ſuch care to have himſelf propoſed for an example of patience and ſuffering unto his diſciples, and to aſſure them that if they ſuffered with him, they ſhould alſo reign with him. Had our Saviour

Saviour allowed ſubjects, under the pretence of defending themſelves and their religion, to reſiſt their ſovereign, he had come, indeed, to deſtroy men's lives; he had then, indeed, ſet ſubjects at variance againſt their ſovereign, and made the world for rebels; the worſt of banditti by the goſpel, which had then been a doctrine of war, and not of peace: But this was not conſiſtent with his infinite wiſdom and goodneſs, and the care which he had for government, and the peace and welfare of mankind. Though tyranny be ill, yet he knew that reſiſtance was worſe; therefore he hath commanded us to lay down our lives for our religion, but not to take up the ſword in defence of it.

What inconveniency the doctrine of the croſs, *paſſive obedience, and non-reſiſtance* brings with it, is ſuch as cannot be prevented, unleſs we ſhould remove the center upon which government is fixed; and admit

mit the inconvenience of reſiſting the ſovereign, which would be ten times worſe than it; for if the former make a land obnoxious now and then unto a tyrant, the latter would make it perfectly obnoxious to the rage and fury of a deluded rabble, who, in riots, tumults, and inſurrections, are able to do more miſchief in a week than ever any tyrant yet did in a year. Indeed, the ſtrokes of a tyrant, like thoſe of thunder, make a great noiſe, and all places ring with it, and it puts the world in great affright; but yet alone and unreſiſted, a tyrant cannot ſpill ſo much blood as would be ſhed by reſiſtance in a defenſive war: for the rage of the worſt tyrants generally wrecks itſelf upon particular perſons, or parties of men; but in a civil war, which is worſe than any tyranny, all muſt ſuffer without diſtinction, and rapine, bloodſhed, and devaſtations, are the conſtant concomitants thereof. I appeal to the rebellions in this nation, if there was not more blood ſhed

ſhed in one battle than in all the tyrannies and perſecutions of the nation ſince the conqueſt; and in theſe two kingdoms there hath been more chriſtian blood ſhed ſince the reformation, by people under the maſk of religion, than throughout the whole Roman empire in nine of the firſt ten famous perſecutions: therefore I cannot but admire the wiſdom, as well as the goodneſs of God, in forbidding us to reſiſt or defend ourſelves againſt the ſovereign.

If we truſt God, and the goodneſs of our cauſe, we muſt be ſure to uſe no means in the defence of it but ſuch as God hath allowed; nor can we ſhew greater diffidence in God, than when we think to ſerve him by our iniquity and unrighteouſneſs, by our ſins to advance his glory; as if God were at a loſs in ſome circumſtances to defend his tottering church and people, unleſs we helped him out a little in a time of great need, by ſtretching our conſciences, and venturing upon ſomething that he hath

hath forbidden! People muſt not take care of God and his cauſe againſt God's mind; for if we do ſo, we put ourſelves out of God's way and protection, renounce his care and providence over us; we declare that we are weary of waiting upon him, chuſe rather to ſtand upon our own legs, and as Saul did, when God had forſaken him, run to the devil for advice.

Among all the hereſies this age has ſpawned there is not one more contrary to the whole deſign of religion, and more deſtructive of mankind, than that bloody opinion of defending religion by arms, and forcible reſiſtance, upon the colour of preſerving religion; the wiſdom of this policy is earthly, ſenſual, deviliſh, ſavouring of a carnal, unmortified, and impatient mind, that cannot bear the croſs, nor truſt the providence of God. But we muſt either ſet up for another goſpel, or utterly reject what is formally condemned by the author of this we profeſs to believe.

If

If we examine the nature and deſign of the holy religion which our Saviour delivered, we ſhall find nothing more diametrically oppoſite to all its rules than the diſtempered fury of theſe miſguided zealots, who being carried on by the fierceneſs of their ungoverned paſſions, have, upon colour of religion, filled all the world with blood and confuſion: otherwiſe doth St. Paul teach the Romans, Chap. xiii. though then groaning under the ſevereſt rigours of bondage and tyranny.

They that deny that reſiſtance is unlawful either do not believe the divine ſcriptures to have been dictated by the Holy Spirit, and then they are infidels, or elſe they account themſelves wiſer than the Holy Spirit, and what are they but madmen?

Very well did our Saviour know, that putting into the hands of ſubjects an authority

rity of taking up arms would be a diſadvantage to themſelves, and prejudicial to the common intereſt of mankind; which is plain, *firſt*, from the horrid miſeries and direful calamities that attend civil wars. Let any one ſearch into the annals of the world, and ſee whether the properties of ſubjects, and the flouriſhing ſtate of kingdoms, have not been much better preſerved by peaceable obedience and ſubjection, than by fomenting civil wars and inſurrections. Sad experience hath ſhewn us, that, while theſe commotions continue, men have no ſecurity for their lives and eſtates but what the ſtrength of a fortreſs, or the ſecurity of a hiding-place, will afford; and if the conſpirators prevail, ſo as to be able to fix themſelves in the ſupreme government, their ſucceſs will put other unquiet and ambitious ſpirits upon following their example, and endeavouring, under the fair pretences of religion, or liberty, to undermine them; and by this means the common-

wealth

wealth is expoſed to the ſaddeſt calamities, and in the end brought to ruin and deſtruction.

The tragical relations of the heavy calamities, cruel ſufferings, and wicked pretences, that have attended rebellious taking arms, might fill volumes; and no country has ſuffered more than England from rebellion. The two things, it is ſaid, they firſt fought about were, *religion* and *taxes*; they have moſt certainly prevailed in both, for we have got all the religions in Chriſtendom, and no nation groans under heavier taxes: But leaving this for the preſent, I ſhall here only give a known inſtance of the fatal conſequences of rebellion in the kingdom of Iſrael.

We read in the Book of Kings, that our Lord was very wroth, and gave up the ten tribes to ruin for ſeparating from the tribe of Judah, and ſetting up a king

to

to themſelves out of the regal way, II Kings xvii. 20, 21. And ſo great was our Lord's diſpleaſure againſt them, that when the man of God was ſent to Jeroboam to reproach him for his ſins, and to threaten him with a vengeance which ſhould overtake him for the ſame, he was forbidden ſo much as to eat bread or drink water there: and we ſee the vengeance of God overtook him for his diſobedience; he was ſlain by a lion in his return from that journey. And will any one preſume to ſay, that the like ſin does not deſerve the like puniſhment; if they do, they muſt back their aſſertion with a revelation.

Towards the end of the kingdom, the practice of taking arms againſt the king was frequent, in ſo much that, in little more than the ſpace of thirty years, four of them were aſſaſſinated by force, overcome, and ſlain; and two of them in one year. During this time there was uſurpation upon uſurpation,

uſurpation, and every one of the ſucceeding uſurpers had this character, that he did what was evil in the ſight of the Lord. And ſuch calamities then befel the kingdom, that during this time, in a chief ſeat of theſe wars, all the women with child were ript up, and this kingdom being gradually weakened by its home diviſions, was, in that compaſs of time, twice invaded by foreign enemies: at the firſt time, it was forced to pay a very great compoſition, II Kings xv. 19, 20. and, at the ſecond time, a great part of the kingdom was loſt, and the inhabitants carried away captive. And in the reign of Hoſea, who was the laſt of thoſe conſpirators, the kingdom firſt became tributary to Aſſyria; and ſoon after, in his reign, was the utter captivity and ruin of the ten tribes, and the total ſubverſion of the kingdom: and this, as Joſephus accounts it, was the end of thoſe Iſraelites, a kingdom divided againſt itſelf being brought to deſolation. So that if

peace, ſafety, and proſperity be deſirable to a people, reſiſting ſuperiors muſt be hurtful to them.

It was the deſign of the goſpel to make men good in all relations, and particularly to make good ſubjects; and ſuch effect it had on the profeſſors of it in the firſt ages of chriſtianity, that as the apologiſts for the chriſtian religion obſerved unto the emperors, it made the chriſtians better ſubjects than other men; it made them cheerfully obey the emperor, and the governors under him in all lawful things; and when things unlawful were commanded by them, it made them ſuffer with patience and conſtancy, rather than reſiſt. They were thankful to God for good princes, as for the greateſt bleſſings, and looked upon bad ones to be ſent by him as well as the good. St. Auguſtine ſaith, he that gave the empire to Marius, gave it alſo to Julius Cæſar; he that gave it to Auguſtus, gave it

it alſo to Nero; he that gave it ſucceſſively to the mildeſt emperors, the two Veſpaſians, gave it alſo to the moſt cruel Domitian: and, not to inſiſt upon more examples, he that gave it to Conſtantine, then chriſtian, gave it alſo to Julian the apoſtate. They took their princes from God as they did the weather; they were thankful for good ones, and ſuffered patiently under the bad, according to the apoſtle's rule, who ſaid, "but if when you do well, and ſuffer for it, and take it patiently, this is acceptable to God."

This was true and laudable divinity in the former ages of chriſtianity, and be he who he will that ſpeaks or writes againſt it, mark that man, and aſſure yourſelf that he hath already conceived Lucifer within him, and is a rebel in his heart: and let every chriſtian practiſe that obedience and ſubmiſſion to ſuperiors which the rules of equity, the nature of civil ſociety, and eſpecially

nuance of this ineſtimable bleſſing of God amongſt us we ought to be moſt zealous. But yet for all this, neither for the preſervation of this moſt holy and excellent religion, nor for the keeping out popery or enthuſiaſm, would I ever, by the grace of God, lift up my finger, or open my mouth againſt the Lord's anointed.

Now, if the church of England, and learned divines and lawyers, if the laws of the land, and the laws of God and nature, condemn perjury, rebellion, and treaſon, as the blackeſt crimes and the moſt damnable ſins; and if the bleſſed apoſtle St. Paul was in the right when he declared, *that they that reſiſt ſhall receive to themſelves damnation; and that their damnation is juſt who do evil that good may come of it*; I would gladly know what religion thoſe men are of who act directly contrary thereto: will they own that they are of the church of England, and that they may and ought

to

to act for God, and ſwear themſelves to the devil for his ſake? that they may damn themſelves for the good of the church, and renounce the principles of the chriſtian, for the preſervation of the proteſtant religion? If they may, under pretence of reforming men's manners, break the commandments of God, and the eſtabliſhed laws of church and ſtate; if they will, I muſt, with the patriarch Jacob, ſay, *O my ſoul come not thou into their ſecret, unto their aſſemblies mine honour be not thou united.*

I cannot, I confeſs, pretend to ſuch mighty concern for religion; ſuch zeal is too wonderful for me, I cannot attain unto it. I have read indeed that the way to heaven is by hell's gates, but I never yet read that they that will be ſaved muſt firſt go down to hell and become the diſciples of Satan; or that the way to be a ſaint in heaven is to be a devil; that is, a traitor upon earth. Thoſe that think ſo may, if

they pleaſe, make the experiment; but I fear they will find themſelves woefully miſtaken in the end; and inſtead of a reward for ſuch their fanatical antichriſtian works of ſupererogation, will, if they dare plead them at the day of judgment, be anſwered with, *Who has required theſe things at your hands?* and receive that ſentence, *Depart from me all ye workers of iniquity.*

And if there were no worſe to be inſtanced againſt thoſe men, but that one accurſed poſition alone, wherein they affirm that lawful ſovereigns may be reſiſted by their ſubjects, and arms taken up againſt them, for the cauſe of religion, it were enough to make out the charge againſt them, that they have renounced the church of England: for the church whoſe doctrine, confeſſion, and worſhip is moſt according to godlineſs, that is the church; but reſiſting a ſovereign by arms is ſuch a notorious

piece

piece of ungodlineſs as no man that either feareth God or the king, as he ought to do, can ſpeak or think of without deteſtation; and is certainly, if either St. Peter or St. Paul, thoſe two great apoſtles, underſtood themſelves, a branch rather of that other great myſtery, 2 Theſſ. ii. *the myſtery of iniquity*, than of the great myſtery in 1 Tim. iii. 16. *the myſtery of godlineſs*.

But they that are true paſtors and orthodox members of the church of England teach and practiſe obedience, and perſuade one another to peace and ſubmiſſion; and in doing this they teach and practiſe no other doctrine than what our Saviour and Maſter did, than what was taught by his diſciples, than what was preached by the primitive chriſtians, and owned in all churches of Chriſt, in all ages of the world, and never contradicted but by papiſts, in order to ſet up the extravagant power of the pope, and by ſome ſectaries ſince the Reformation,

It is notorious that no perſons yield leſs undue prerogative than the men of paſſive obedience, and the very terms as well as intention of that doctrine carry it ſo.

In all civil concerns the law is the rule of obedience, whether active or paſſive; the former belonging only to the lawful, and the latter to the unlawful commands; and there can be no better means of aſſerting the rights of the people than by diſowning unlawful commands by patient ſuffering: for which reaſon the paſſive-obedience men are the moſt expreſs defenders of the laws againſt unbounded prerogative. When kings command things evil, obedience is due only by tolerating what they inflict, not by performing what they require; in the firſt they declare what God commands to be done, and in the latter what to be ſuffered: For complying is ſetting up prerogative, and ſuffering is denying it; and more effectually than riſing

up

the race that is ſet before them, and not look to, or imitate, the later practices of too many diſtempered and degenerated chriſtians: and by ſo doing they will be an honour to their profeſſion, and give a credit to their church; by ſhewing that they were ſubject, not only for wrath, but for conſcience ſake. Let them keep in their hearts, and, by their deeds, ſhew the world that they believe what Solomon, the wiſeſt of kings, has left them, Prov. xxiv. *Fear thou*, &c. that is, in ſhort, they who offer violence to kings, and their authority and majeſty wherewith God has clothed them, the anger and vengeance of God ſhall cruſh them to pieces. We ſhall leave thoſe that murder and dethrone kings to the judgment of God; and his curſes, which are denounced againſt ſuch crimes, the horrible, yet moſt juſt, judgment of God, which hangs over their heads, might be ſufficient to deter people from parting with their allegiance.

he did not over-tenderly treat the ſcrupulous nonjurors, who looked upon their oaths as obligatory.

The pious protector, in place of rewarding thoſe biſhops and clergy who ſtood ſo firm in the great time of trial in defence of the church, and thoſe liberties which that good Prince in great humility came to ſecure; inſtead of rewarding them, I ſay, he deprived them of their preferments, and turned them out to be ſtarved; and the revolution ſo improved us in our notion of chriſtianity, and ſo little regarded the ſpiritual nature of the church, that we then deprived our biſhops by wholeſale by acts of parliament; and even the archbiſhop of Canterbury, the metropolitan of all England, and the head of this part of the chriſtian church, who had acted with the ſpirit of a true Briton in defence of our conſtitution and liberties, and with the

the ſincerity of a chriſtian and the zeal of a martyr in the behalf of our religion, was deprived by the good foreign king and his own dutiful laity, and religiouſly turned out to be ſtarved by that glorious deliverer, who came to ſave our religion and protect our liberties, and who piouſly aboliſhed epiſcopacy itſelf in Scotland.

They who were fully convinced that it was their duty in all things to behave themſelves according to the law given them by God, were perfectly perſuaded that no neceſſity can more oblige them, no force be ſtronger upon them, than that by which they ſtood bound to obey his laws; and for this reaſon they thought their acting contrary to it cannot be diſpenſed with upon any terms whatſoever. Nay, ſuppoſe they were miſtaken in thinking paſſive obedience to be a divine inſtitution, and indiſpenſibly neceſſary to be obſerved, yet, even in that caſe, I muſt crave leave to ſay, that ſo long

long as they continued ſo to believe it, that very perſuaſion ought to be an effectual reſtraint upon them from violating and thinking meanly of it: in ſo doing they ſhewed themſelves prieſts moſt worthy of their holy function. O glorious preachers of the goſpel, and maſters of that beſt philoſophy which God's own word hath taught us! O noble pattern ſet to all that ſtand up in vindication of the ſcriptures, defending them againſt the inſults of paſſion, with generous ſweat and toilſome conflict! Theſe holy fathers have brought glory to our excellent conſtitution by their ſuffering and patience, and convinced the world what mighty efficacy the philoſophy, which came down from heaven, hath upon minds firmly reſolved not to reproach, but to reflect as it were honor upon their holy profeſſion. O conſtancy, moſt firm! O zeal, hotter than fire! O how happy are thoſe lives of unqueſtionable integrity and conſtancy, when they begin

begin to live again in heaven, after they have been conſummated and arreſted by the ſeal of death! And if their doctrine was the voice of God, delivered to us in his holy word, I wiſh all their brethren had followed their pattern, and not deſerted in the noble conflict, nor diſclaimed their relation as brethren. When we engage in defence of religion, it is a holy and glorious warfare, and we need not doubt, but the tender providence of the Father above, juſt and gracious, whom we worſhip, will not only reward us, but be propitious to our whole nation, and certainly humble every haughty and bloody tyrant with puniſhments as uncommon and amazing as their pride and cruelty. When religion and a good conſcience are at ſtake, let us abandon all ignoble fears, and act with reſolution becoming ſo glorious a cauſe. Let us, when we are called upon, cheerfully conſecrate our ſouls to our God. Let us pay him back the lives he lent us for his

ſervice, and give up our bodies for the uſe and defence of his moſt holy law. Let us be aſhamed to ſtand in fear of one who only can kill the body: the only danger worthy our dread is, that of ſouls abandoned to torments everlaſting; which never can be the ſad fate of ſuch as keep and honour the truth, but of them only who tranſgreſs and forſake it. Let us then, when we are called upon, arm ourſelves with a holy fortitude, ſo ſhall Abraham, Iſaac, and Jacob receive us when we die; ſo ſhall all our pious anceſtors congratulate and applaud our conſtancy.

Having now ſhewn that government was the ordinance and inſtitution of God, and that the ſupreme power was ſettled and founded in the fatherhood, let me now aſk any perſon, how it is poſſible for the people to alter or otherwiſe diſpoſe of it? What commiſſion can they ſhew, that gives them power either of limitation or mix-

ture?

ture? It was God's ordinance that ſupremacy ſhould be unlimited in Adam, and as large as all the acts of his will; and as in him, ſo in all others that have the ſupreme power.

As the ſcriptures teach us, that ſupremacy was originally in the fatherhood without any limitation, ſo likewiſe reaſon doth evince that God ordained that it ſhould be ſo. Supremacy muſt of neceſſity be unlimited; for the power that limits muſt be above the power that is limited; and if it be limited it cannot be ſupreme, becauſe ſupreme limited power is a contradiction. As ſoon as the monarch's power becomes limited, from that moment he ceaſes to be a monarch, and becomes a ſubordinate magiſtrate. The monarchical power of Adam, the father of all fleſh, being by a general binding ordinance ſettled by God in him and his poſterity by right of fatherhood, monarchy muſt of

conſequence be preferred to all other forms, unleſs the like ordinance for other forms can be ſhewed.

If God hath taught us by natural inſtinct, ſignified to us by his creation, and confirmed by his own example, the excellency of monarchy; for God did always govern his own people by monarchy only; and if there is not in all the ſcriptures mention, or approbation of any other form of government, then monarchy is the beſt of all governments. Indeed, I muſt confeſs, I believe it impiety to think that God would not make choice of the beſt form of government, or to imagine that the rules given in divers places of the goſpel by our Bleſſed Saviour and his apoſtles for obedience to kings, ſhould now be out of date, and of no uſe to us, becauſe it is pretended that we have now a form of government, not once thought of in thoſe days; but what government now, or what form of government,

ment, can be more ſacred and venerable than monarchy?

Seeing then that monarchy is of divine inſtitution, and as the infinitely wiſe God would enjoin nothing to his people but what was beſt fitted for maintaining their ſafety and intereſt, conſequently monarchy is the beſt of all governments.

MONARCHY is compounded of the two Greek words μονος and αρχειν; μογος ſignifies *alone*, which is, that the monarch muſt have the ſupreme power alone without any partner; αρχη, which ſignifies *principality* and power, doth alſo ſignify *principium*, *beginning*; which teacheth us, that by the word *prince* or *principality* the beginning of government is meant. This, if it be given to the law, robs the monarch, and becomes the maſter. Thus the two words of which monarchy is compounded, plainly ſhew the nature of it, and from the very word itſelf we ſee, that to ſay that the government is lodged in the king, lords,

and commons, in plain Engliſh, is nonſenſe.

Of all right kinds of government, ſays Ariſtotle, monarchy was the beſt; and we find in all aſſemblies, of what quality ſoever they be, they all agree in one point, to give that honourable regard to monarchy, that they do interpret the major or prevailing part in every aſſembly to be as one man, and ſo do feign to themſelves a kind of monarchy: And moſt certainly, if unity in government, which is only to be found in monarchy, be once broken, there is no ſtay or bound till it come to a ſtanding army.

It is very remarkable that by how much nearer any ſtate hath warped towards what ſome call a commonwealth, by ſo much hath tyranny got ground, and the true liberty of the people is ſunk down.

Lycurgus, the famous lawgiver, after he had undertaken the ordering the city of Sparta,

Sparta, and had ſettled kingly government there, being aſked why he did not rather bring in ariſtocracy or democracy, anſwered, Why do not you try one or other of theſe governments in your family?

Reaſon, which governs, or at leaſt ought to govern man, directs us to monarchy as the moſt certain form of government; and we may reaſonably aſcribe this form to nature itſelf, which delighteth in unity: it is only one ſun in the heavens that, by his bright beams, enlightens the world, and one reaſonable ſoul in man which rules all the members of the human body. Monarchy, ſays Sir Francis Bacon, is founded in nature. Should we run over all the nations in America, &c. where mere nature to this day ſhews itſelf, without the advantages of liberal education, we ſhould find all theſe nations to have their kings, whom they follow as their common leaders in peace and war, and whoſe orders they obey: other forms of government, whe-

ther ariſtocratical or democratical, are not as yet heard of amongſt them.

Thus amongſt men all things tend to monarchy; and were we to caſt our eyes over the brute creation, we ſhould find the ſame inclination amongſt them to it, with this difference, that men have reaſon to guide and admoniſh them, whereas the brute creation have nothing to direct them but natural inclination and inſtinct. The bees have a king, and the herds of cattle have their leader, and even rogues and robbers keep their faith to each other, and obey, with all due deference, their head and captain. In this reſpect, how much better and more void of miſchief are brutes and dumb creatures, and even cut-throats themſelves, amidſt their bloody purpoſes and all their engines of death and deſtruction, than rebels? Cut-throats and robbers acknowledge their head and leader with all due deference, though he hath no ſentence from heaven to confirm his power, nor,

nor, indeed, any other authority than what is agreed to be given him by a crew of peſtilent and pernicious raſcals, who find their intereſt in having a head or leader. Common clubs, or meetings, are forced to have their chairman, or preſident, to keep order.

Monarchy certainly has the advantage over all other forms of government, in that it is free from thoſe terrible convulſions which often happen, when co-ordinate powers ſtruggle for ſuperiority, or equals in republics to gain the aſcendant over their rivals in power.

Ariſtotle ſays, in the beginning cities were, and now nations, under the government of kings; the eldeſt in every houſe is king. In another place, of all right kinds of governments, ſays he, a monarchy was the beſt. Again, religion towards God, and peace towards men, is the end and deſign of all government; but never

was

was any popular eſtate in the world famous for their worſhip of God, or goodneſs and juſtice to man; all their glory hath been in quarrelling and fighting: let us then ſee whether godlineſs and peace can be found under any government but monarchy. We find in the Roman government, preſently after the building of the city by Romulus, his ſucceſſor Numa moſt devoutly eſtabliſhed a religion, and began his kingdom with the ſervice of his Gods, which law lafted 170 years: he alſo erected a pontifical college, and was himſelf the Pontifex Maximus, the firſt biſhop: this care had monarchy of religion. But after the expulſion of the kings we do not find during the power of the people any one law made for the benefit of religion.

The religion of Venice and the Low Countries is ſufficiently known; it is commonly ſaid, that one of them hath all religions, and the other none. The atheiſt of Venice may ſhake hands with the ſectary

tary of Amſterdam. This is the liberty that a popular eſtate can brag of; every man may be of any religion, or no religion if he pleaſes: their chief devotion is to oppoſe chriſtianity and ſuppreſs monarchy.

If we conſider the ſecond end and deſign of government, we ſhall find that no people ever enjoyed it without monarchy. Ariſtotle ſaith, the Lacedemonians preſerved themſelves by warring, and after they had got to themſelves the empire, then were they preſently undone, for they could not live at reſt, nor do any better exerciſe than the exerciſe of war. After Rome had expelled kings it was in perpetual war till the time of the emperors: once only was the temple of Janus ſhut, after the end of the firſt Punic war, but not ſo long as one year. Oroſius tells us, that the bowels of Rome did ſweat blood for almoſt ſeven hundred years. It may indeed be ſaid, they obtained moſt glorious victories

victories abroad; but if it be rightly conſidered, the Roman conqueſt had no other foundation but injuſtice, which, in the judgment of ſober thinking men, ſoils all the glory of her warlike actions; for, to ſpeak the truth, they were no other than the only proſperous and glorious thieves and robbers in the world. And if we look narrowly into the Roman government we ſhall find, that, in the very age in which Rome was moſt victorious, ſhe owed her glory entirely to an apparent kind of monarchy; and it is moſt obſervable, that commonwealths themſelves, or what we call commonwealths, have always their recourſe to monarchy, as often as greater dangers threaten them than can be diverted by ordinary means or remedies.

It was the kingly power of the Roman conſuls, who, as Livy ſays, had the ſame regal juriſdiction, or abſolute power, the kings enjoyed, not a whit diminiſhed or abated,

abated, with all the ſame enſigns of ſupreme dignity, which helped Rome to all her conqueſts. Whilſt the tribunes of the people were ſtruggling at home with the ſenate about the election of magiſtrates, raiſing ſeditions and diſorders within the walls, the kingly conſuls gained all the victories abroad. Rome was ſo ſenſible of the benefit and neceſſity of monarchy, that in her moſt deſperate condition, when great and impending danger hung over her head, and all other hopes failed her, ſhe had ſtill reſort to the creation of a dictator, who for the time was a moſt abſolute king, and from whom no appeal to the people was granted, which is the royaleſt evidence of monarchy in the world; for they who were drawn to ſwear they would ſuffer no king of Rome, found no ſecurity but in perjury and breaking their oath, by admitting the kingly power in ſpite of their teeth, under the new name of dictator or conſul; a juſt reward for their wantonly expelling their king,

king, puniſhing the father for the tranſgreſſion of the ſon: But in ſome other country, of more modern date, the caſe is reverſed; a good, brave, great Proteſtant prince has ſuffered for the fault of his forefathers.

To ſay the truth, we find no other cauſe for the expulſion of Tarquin, than the wantonneſs and licentiouſneſs of the people of Rome. Thus further is to be conſidered in the Roman government, that all the time between their kings and their emperors there was a continued ſtrife between the nobles and commons, till the latter prevailed at laſt, and then inſtantly began the civil war, which laſted till the regal power was brought home, and ſettled in monarchy. And even in her chief popularity, it is obſervable, that ſhe was often beholden for her preſervation to the monarchical power of the father over the children.

The

The Athenians, though they choſe their magiſtrates yearly, yet in imminent dangers they ſet one prince over their republic, and put all things in his power; all other magiſtracy and power being ſwallowed up in his. Bodin ſays, the chief point of a commonweal, which is the right of ſovereignty, cannot be, nor exiſt, to ſpeak properly, but in monarchy, for none can be ſovereign in a commonweal, but one only; if there be two, or three, or more, no one is ſovereign, for no one of them can give or take a law from his companion; for *par in parem non habet imperium ex juere*, one has no authority by law over his equal: and although we imagine a body of many lords or people to hold the ſovereignty, yet hath it no true ground or ſupport if there be not a head with abſolute power to unite them together, which a ſimple magiſtrate without ſovereign authority cannot do: and if it ſhould ſo happen that the lords and tribes of the people be di-

vided, as it often falls out, then muſt they fall to arms one againſt another; and although the greateſt part of them be of one opinion, yet it may ſo happen, as the leſſer part having many legions, and making a head, may oppoſe itſelf againſt the greateſt number, and get the victory.

We ſee the difficulties which are and always have been in popular eſtates; whereas they hold contrary parts, and for divers reaſons, ſome demand peace, others war; ſome will have this law, others that; ſome will have one commander, others another; ſome are for a treaty with the king of France, others with the king of Spain; corrupted or drawn ſome one way, ſome another, making open war. All mutations from monarchy proved moſt bloody and miſerable to the authors of them, happy in nothing but that they continued a ſhort time. There was not a ſettled form of government in Rome from the expulſion of

of Tarquin till Julius Cæſar, which was 480 years. For after they had once loſt the natural power of kings they could not find upon what form of government to reſt; and their fickleneſs is an evidence that they found things amiſs in every change.

At the firſt they choſe two annual conſuls inſtead of kings, but theſe did not pleaſe them long; they muſt have tribunes of the people to defend their liberties; they leave tribunes and conſuls, and chuſe them ten men to make laws; then they again call for conſuls and tribunes: ſometimes upon extraordinary emergencies, as I obſerved before, they choſe dictators, who were temporary kings; and ſometimes they had military tribunes who had conſular power. All theſe ſhiftings cauſed ſuch a notable alteration in the government, as makes it impoſſible for hiſtorians to find out any thing that deſerves the name of a form of government in ſuch confuſions. The civil

wars and diſſenſions, which were daily, filled the ſtreets with oceans of blood; at the ſame time when the Roman victories abroad amazed the world, the tragical ſlaughter of citizens at home deſerved commiſeration from their vanquiſhed enemies; and, by creating a dictator in their greateſt extremities, they gave honourable teſtimony for monarchy, and found it their greateſt refuge in perils of ſtate: and at theſe times the height of the Roman liberty was, that any man might be killed that would; a favour not to be granted under a regal government.

In that ſedition between Marius and Sylla, nay even by Sylla's party alone, not to mention the acts of Marius, fourſcore and ten ſenators were put to death, fifteen conſuls, and 2600 gentlemen, and 100,000 others. They were then imbrued with blood and horrible murders, the huſband was ſlain in the wife's arms, and the children

in their mothers laps. For there is nothing more furious, headſtrong, and uncertain than the people; their opinions are as variable, ſudden, and boiſterous as tempeſts; there is neither truth nor judgment in them; they are not led by wiſdom to judge of any thing, but by violence and raſhneſs; they are moſt deſirous of new ſtirs and changes, and are enemies to quiet and reſt; whoever is giddy or headſtrong, him they account manly and courageous.

That we have had a monarchy in England time out of mind is beyond diſpute, and that that monarchy or realm is a perfect ſovereignty and empire, and the king a complete or imperial ſovereign is likewiſe indiſputable. Thus, by the whole parliament, 24 Hen. VIII. chap. xii. it was reſolved and ſo declared; *by ſundry authentic hiſtories and chronicles it is manifeſtly declared and expreſſed, that this realm of England is an empire, and ſo hath*

been accepted in the world, governed by one ſupreme head and king, having the dignity and royal eſtate of the imperial crown of the ſame. So, 25 Hen. VIII. chap. xxi. *The crown of this kingdom is affirmed to be an imperial crown, in theſe words,* " *In great derogation of your imperial crown and authority royal.*" So, 1 Eliz. chap. ii. *Reſtoring and uniting the imperial crown of this realm, the ancient juriſdictions,* &c. So, 1 Jac. chap. i. *A more famous and greater union of two mighty famous and ancient kingdoms untler one imperial crown.* Many other teſtimonies might be brought, but theſe may ſerve to ſhew that the realm of England is a perfect ſovereignty or empire, and the king a complete or imperial ſovereign.

Now in all imperial kingdoms the king is ſupreme in his own dominions, next under God; and hath full, perfect, and entire juriſdiction from God alone, and all others within his dominions, by emanation from

from him, who being the fountain of all power and honour, and the ſole diſpoſer of all things, confers all authority, marks of diſtinction, titles of honours, and poſſeſſions; as ſeemeth good unto him.

Our kings often ſat in court themſelves and gave judgment. Bracton ſays, lib. iii. chap. ix. "Rex, non alius, debet judicare, ſi ſolus ad id ſufficere poſſit." And the ſame author ſays, that in the Civil Cauſes, "Si curia domini ei (i. e. tenenti) defecerit, transferri debet placitum ad comitatum, ut vicecomes rectum teneat: & ſic a comitatu transferri poterit ad magnam curiam extra cauſa, ſi dominus rex voluerit et ibi terminari."

In this Magna Curia, ſays Dugdale, which was within the king's palace, before him and ſuch of his nobles as he pleaſed to aſſociate with himſelf for that purpoſe, the Juſtitiarius Angliæ ſeems to to have preſided. And this was the caſe

not only after the Norman conqueſt, but in a good meaſure even in the Saxon times, as appears from the laws of Canute the Great, which allow the plaintiff an immediate appeal to the king, if the ſhire-mote delayed this remedy above four court days. Aſſer Manev. derebus geſtis Alfredi, ſays, "Studebat is (Alfredus) in judiciis propter nobilium & ignobilium ſuorum utilitatem, qui ſæpiſſime in concionibus comitum et præpoſitorum pertinaciſſimę inter ſe diſſentiebant ita ut pene nullus eorum, quidquid a comitibus et præpoſitis judicatum fuiſſet, verum eſſe concideret, qua pertinaci diſſentione obſtinatiſſime compulſi, regis ſubire judicium ſubarabant."

From many places it appears that our Saxon kings continued to do the ſame, or had a right ſo to do. Gervaſe, of Tilbury, ſpeaking of the Exchequer, ſays, "Habet enim hoc commune cum ipſa domini regis curia, in qua ipſe in propria perſona jura decernit."

decernit." And Art. xiii. aſſizæ factæ apud Clarend. in the reign of Henry II. it is ſaid, "Niſi tam grandis ſit querela quod non poſſit decu ei ſine domino rege, vel talis quam juſtitiæ ei reponent pro dubitatione ſua, vel ad illos qui in ejus loco erunt." Here the judges of the King's-bench are evidently diſtinguiſhed from the king's perſon; and he is repreſented to have a judicial authority in himſelf, diſtinct from them. Henry III. ſat and ſpoke in court, determined cauſes as he travelled through the country, and in perſon ſet amerciaments in ſeveral places. And though after the time of Edward I. our kings ſeem to have exerted their judicial power leſs and leſs, yet ſtill they continued to retain a great deal of it, and to exert it when they pleaſed in ſeveral caſes.

And not only ſeveral of our kings, but even ſeveral of their privy-councils, by the king's authority, uſed to take upon them to judge in various caſes, wherein private

poperty was concerned; and that even in original cauſes, which naturally might have belonged to the ordinary courts of juſtice. This does very clearly appear by the complaint of the commons in the parliament 25 Edward III. petitioning that no man ſhould be put to anſwer for his freehold before the king's council, or before his miniſters, to which petition the king readily agreed. Again, 37 Edward III. chap. viii. There was an act made againſt ſuggeſtions to the king, by which people were put out of their freeholds without due proceſs of law. In 2 Richard II. the commons petitioned, that no man, by writ or otherwiſe, be forced to anſwer for his freehold before the council for oppreſſions. In 1 Henry IV. the commons again petitioned, that all perſonal actions between party and party may be only tried by order of the common law, and not otherwiſe: To which the king anſwered, that the ſtatutes therefor provided ſhall be obſerved, except

cept one party is ſo grand and the other ſo poor, that he would not by that means have recompence. By theſe anſwers we ſee our kings were unwilling to part with this judicial authority. And in fact they retained it in no ſmall degree, and even had it, in ſome reſpects, augmented, by thoſe ſtatutes in the reigns of Henry VII. and Henry VIII. which regulated the judicature of the Star-chamber, of the Court of Requeſts, &c. In theſe courts the privy-council determined ſeveral matters in which property was concerned, and which would, in the ordinary courſe of the law, have been determined by the Courts of Weſtminſter-hall. How much the nation found themſelves aggrieved by theſe proceedings, we ſee in our hiſtory from the reign of Henry VII. till the Star chamber Court was aboliſhed by Charles I.

Now, inſtead of having our cauſes tried and determined by a privy-council, we have

have them tried before a jury of our fellow-freeholders, who are inſtructed as to points of law by the judges; who not only have their places for life, and conſequently need not be under the influence of the court, but are, I believe, under the inſpection of parliament, and as judges can take no fees.

I ſhall now proceed to conſider the nature and inſtitution of parliaments.

As an inquiry into the ancient ſtate of the houſe of commons in parliament is a ſubject of great importance, I ſhall do all in my power to ſet it in a proper light: and in order to fathom the chain from beginning to end, I ſhall take it link by link.

I find, by the moſt authentic records, that this country was peopled by a colony of Gauls, or Celtæ, from the continent; who, upon their landing, divided themſelves

ſelves into ſmall nations, or tribes, governed by chieftains, or chiefs, or ſovereigns, who had ſupreme authority in their reſpective dominions. But their frequent quarrels with the Scots and Picts, who likewiſe came from the continent, and their unhappy diviſions among themſelves, gave occaſion to Julius Cæſar to tranſport an army from Gaul into Kent, about fifty-five years before the birth of Chriſt, where he got ſuch footing as enabled the Romans afterwards to ſubdue the greateſt part of the Iſland: And the emperor Claudius reduced the princes under the government of Roman lieutenants, in which ſtate they continued about four hundred years.

Wherefore, in order to form a clear idea of the Engliſh laws and cuſtoms, and perfectly to underſtand the conſtitution of this country, it will be neceſſary to make a journey even to Rome, and to begin with Romulus,

Romulus, the leader of the banditti, who, in time, gave laws to all the world.

The ſimilarity of many of the Engliſh laws and inſtitutions, to the cuſtoms of the ancient Germans, to the practice of the other northern conquerors, and to the Saxon laws, during the heptarchy, evidently ſhews us that the German feudal laws and cuſtoms were the baſis and origin of the Engliſh conſtitution; which is no other than the German juriſprudence reformed and extended.

Rollo, a Daniſh prince, who firſt ſettled in Normandy, with his followers, who conſiſted of Danes, Norwegians, Swedes, Friſians, and adventurers of all nations, whoſe poſterity ſoon after ſubdued England, eſtabliſhed the feudal cuſtoms among the Normans, who brought them over to this iſland with them, where they were long before eſtabliſhed; and the Normans finding

ing them much improved and enlarged, made no great alteration in them, only adding a few peculiar cuſtoms of their own. They aboliſhed none of the old abſurd methods of trial, by the ordeal or croſs, but added a new abſurdity, viz. trial by ſingle combat, which, after the Norman invaſion, became a regular part of juriſprudence in this kingdom. This method of determining queſtions of right and property was continued in England till queen Elizabeth's reign. There was an inſtance of this kind, and, perhaps, the lateſt upon record in our hiſtory, in the 13th year of Elizabeth, when a combat was appointed to be fought for a certain manor and demeſne lands belonging thereto in Kent. The matter was compromiſed in the end; but not till after the uſual forms had been obſerved by the two parties; of which we have a curious and circumſtantial detail in *Holingſhead's chronicles*.

The

The ideas of chivalry alſo ſeem to have been imported by the Normans. The feudal inſtitutions, by raiſing a ſet of men to a kind of ſovereign dignity, rendering perſonal ſtrength and valour ſo requiſite, and making every knight and baron his own protector and avenger, begat that military pride, or ſenſe of honour, which, being cultivated and embelliſhed by the poets and romance writers of the age, ended in chivalry. The virtuous knight fought not only in his own quarrel, but in that of the innocent, the helpleſs, and above all the fair, whom he ſuppoſed to be for ever under the guardianſhip of his valiant arm. The uncourteous knight who from his caſtle exerciſed robbery on travellers, and committed violence on virgins, was the object of his perpetual indignation, and he put him to death without ſcruple, trial, or appeal, wherever he met with him. The great independence of men

made

made perſonal honour and fidelity the chief tie among them, and rendered it the capital virtue of every true knight, or genuine profeſſor of chivalry. The ſolemnities of ſingle combat, as eſtabliſhed by law, baniſhed the notion of every thing unfair or unequal in rencounters, and maintained an appearance of courteſy between the combatants, till the moment of their engagement.

The credulity of the age grafted on this ſtock the notion of giants; and when learning baniſhed theſe enthuſiaſtic notions of chivalry, there remained, after all, the modern gallantry and point of honour, which ſtill maintain their influence, and are the genuine offspring of theſe ancient affectations.

The feudal law being, as moſt certainly it is, the chief, nay the only foundation (the laws of God excepted) both of the political

litical government and of the juriſprudence of all Europe, our ſubject requires that we ſhould form a juſt idea of this law, in order to explain the ſtate and conſtitution of any kingdom.

ROMULUS, the founder of the Roman empire, was ſupreme judge, king and governor of his comites, companions or followers. Dionyſius Halicarnaſſeus tells us, that, amongſt the Romans, the king commanded the armies, directed the ſacrifices, determined civil and criminal cauſes, called the ſenate together, convened the people, laid ſome affairs before them, and regulated the reſt with the ſenate. The moſt of Romulus's time was employed in fighting and plundering; any differences ariſing among his followers, concerning the diviſion of booty, were determined by his verbal declaration. When he had extended his conqueſts, and had poſſeſſed himſelf of ſome territory, he adopted the laws

laws of the conquered with ſome additions of his own making. He divided the land of his little kingdom among his ſubjects, and regulated the ſucceſſion by laws of his own deviſing, whereby he appointed that the property of one family ſhould not paſs into another; from hence it followed that there were only two orders of heirs eſtabliſhed by law. The children and all the deſcendants that were not emancipated, but lived under the power of the father, whom they called *ſui hæredes*, or his natural heirs, and in their default, the neareſt relations on the male ſide, whom they called *agnati*, could only inherit it. But the relations on the female ſide, whom they called *cognati*, could not ſucceed; by which means eſtates could not be conveyed from one family to another. And, in the firſt ages of Rome, no citizen was allowed to break in upon the order of ſucceſſion, or ſo much as to make a will. And we find the ancient laws of the Athenians did not

permit a citizen to make a will. But the laws of the ancient Romans concerning ſucceſſion, being formed with the ſame ſpirit which dictated the diviſion of lands, were found to be attended with inconveniencies, which occaſioned the king to make ſome alterations, and to allow of teſtaments, if they were made in the great aſſembly of the people, which met twice a year for ſolemn talks or parleys; which the word Parliament properly ſignifies. In time, as the people, and the affairs brought before them, increaſed, it was judged convenient to permit all the citizens to make their will before five citizens of ripe age, who were to repreſent the body of the people.

At firſt all diſputes and controverſies were determined at the *placitum*, *mallum*, or general aſſembly, which was held whenever there was any buſineſs of conſequence depending; the meetings for ſolemn talk were uſually in the open air, where the king

king ſat as ſupreme judge, and with the advice of his comites, companions or barons, who attended at theſe meetings, he determined all cauſes. The king ſat upon a kind of bench, or throne, and as many of his barons as he pleaſed to call for their advice were placed round him, and the ſoldiers, or common men, (for every freeman was a ſoldier born) made a ring round them, and ſerved only as a guard to inſure the king's ſafety while he was giving judgment, and to prevent riot and bloodſhed. It cannot be ſuppoſed that theſe common men gave their vote at the deciſion of any cauſe.

As the Romans extended their conqueſts, the increaſe and poſſeſſion of property, for a length of time, gave riſe to various cuſtoms, and as they adopted the laws of the conquered countries and mixed them with their own, that ſtill added to the number of civil debates; which in time became ſo numerous and complicated, that the king found it impoſſible to determine all cauſes

in his own perſon, therefore he deputed others to act in his place. Servius Tullius was the firſt among the Romans who reſigned the power of judging civil cauſes, and only reſerved to himſelf the criminal. He diveſted himſelf, ſays Halicarnaſſeus, of half the regal power. After the expulſion of the Tarquins, Rome was toſſed like a ſhip at the mercy of the waves, without anchor, compaſs, or helm: their foreign wars, which engaged all their attention, was the only thing that prevented their falling to pieces, as we plainly ſee; for as ſoon as they were at peace with their enemies, they fell out amongſt themſelves.

Immediately after the baniſhment of their kings, there aroſe jealouſies between the patricians and plebeians: The patrician families enjoyed great privileges under the kings, which became more important after their expulſion. The kings often conſulted, and paſſed ſentence in conjunction with the ſenators or great men, but

but after they got quit of that dead weight, they engroſſed all ſacred, civil, political, and military employments; an exorbitant power was annexed to the conſulate; the people were groſsly abuſed, inſulted, and oppreſſed, and had ſcarce any influence at all in the public ſuffrages. This occaſioned much diſpute, riot, confuſion, and a kind of civil war within the very walls of Rome; and after many ineffectual attempts and much ſtruggle the people got the better, and the method they took was this: The Romans were divided in three different ways, by *centuries*, by *curiæ*, and by *tribes*; and, whenever they gave their votes, they were aſſembled one of theſe three ways. In the firſt the patricians, or rich leading men and ſenators had almoſt the whole authority; in the ſecond way of convening the people they had leſs; and ſtill leſs in the third.

The diviſion into centuries was rather a diviſion of eſtates and fortunes than of

perſons; for here the whole people made up a hundred and ninety-three centuries, each of which had a ſingle vote. The patricians or leading men compoſed the firſt ninety-eight centuries, the other ninety-five were made up of the remainder of the people; by which means the patricians were always maſters of the ſuffrages, and carried every thing their own way. But in the diviſion into curiæ they had not entirely the ſame advantages, though even there they carried every thing before them: for it was neceſſary that the augurs ſhould be conſulted, who were under the direction of the patricians; and no propoſals could be made there to the people, unleſs it had been previouſly laid before the ſenate, and approved of by the *ſenatus conſultum.* In the diviſion into tribes the patricians were excluded, and they had nothing to do with augurs, or with the decrees of the ſenate.

The people, in order to reſcue themſelves out of the hands of the tyrannical patricians, and to enjoy ſome ſhare in the government,

conſtantly endeavoured to have the meetings by curiæ which formerly were by centuries; and by tribes, thoſe that had been before by curiæ; by which means the direction of public affairs ſoon devolved from the patricians to the plebeians, and when they, by great ſcrambling and buſtle, had obtained the power of judging the patricians, which firſt commenced in the affair of Coriolanus, they inſiſted upon judging them by aſſemblies in tribes and not in centuries. So that they alone, without the patricians or ſenate, enacted laws, called plebiſcita; and the comitia, in which they were made, had the name of Comitia by Tribes. Thus the patricians had no ſhare in the legiſlative power, but were themſelves ſubject to another body of the ſtate. In the comitia of the tribes, the plebeians got it enacted that they ſhould be capable, or eligible to ſerve in any office, except that of *Inter-Rex*; for till then no plebeians were allowed to fill any office of ſtate. They likewiſe eſtabliſhed

tribunes, who were nominated by aſſemblies of tribes. The tribunes had a power, on all occaſions, of checking the incroachments of the patricians, and of preventing not only particular but general injuries. The conſulate was, by their activity, broke, or rather divided into ſeveral other magiſtracies. Prætors were created, with a power of judging in private affairs; quæſtors for criminal cauſes; ædiles for civil adminiſtration; and treaſurers for the management of public money. Cenſors too were nominated to regulate the morals of the citizens, and the momentary policy of the different bodies of the ſtate, which was a legiſlative power of the conſuls, whoſe chief privilege now was to preſide in the great meetings of the people, to aſſemble the ſenate, to command the armies. But after all they could not continue long in this ſtate; corruption of manners deſtroyed the cenſorſhip, which was itſelf eſtabliſhed to deſtroy and prevent the corruption of manners. When this corruption becam

general,

general, the cenſor loſt his power. Nothing but continual jarring, diſcord, and jealouſy, ſubſiſted between the two contending parties; they were conſtantly worrying one another. In the heat of their conteſts the plebeians ſaid, *Come, let us have laws, we will no longer live in a ſtate of ſlavery, and public judgment ſhall no longer be the effect of a capricious will, or of arbitrary tyrants;* to which the ſenate, ſore againſt their wills, conſented. Accordingly *decemvirs* were nominated to compoſe laws. It was thought proper to grant *them* an extraordinary power, becauſe they were to give laws to parties whoſe views and intereſts it was almoſt impoſſible to unite. The nomination of all the magiſtrates was ſuſpended, and they were choſen, in the comitia, ſole adminiſtrators of the republic, and were inveſted with a conſular and tribunitian power: by the one they had a privilege of aſſembling the ſenate; by the other they had a right of calling together the people.

They

They found themſelves poſſeſſed of the whole executive and judiciary power; and Rome ſaw herſelf enſlaved by the cruel tyranny of ten men, who as much exceeded Tarquin, their baniſhed king, in cruelties, as they did in number. But as the bloody body of Lucretia put an end to the regal government, ſo did the ſpectacle of Virginia's death to that of the decemvirs.

Jealous as the people were of their legiſlative power, yet they had no great care or jealouſy of the executive, which they truſted intirely to the ſenate: For the paſſion of the Romans was a thirſt for power; their ambition was to conquer, and their beginning and progreſs were a continued uſurpation. They had conſtantly affairs of the greateſt weight upon their hands. They were always conſpiring againſt their enemies, or they againſt them.

No people were ever better fitted for a republican government than the Romans, yet

yet we find even there, where there was hardly any thing to do but to go out to the field of battle and fight the enemy, it could not do. They were obliged to have their conſuls, their cenſors, their prætors, their dictators, &c. who exerciſed the law on the very body of the people ideally poſſeſſed of the legiſlative power. Before them the ſovereign bowed his head, and the moſt popular laws were ſilent. When Rome enlarged her conqueſts and extended her dominions far and wide, ſhe was obliged to ſend prætors and proconſuls into every province: They were deſpotic baſſas, a ſet of rapacious men who ſowed new miſery amongſt the miſerable people, and made a ſport of the public calamity.

When the Gracchi deprived the ſenators of the power of judging, the ſenate was then no longer able to withſtand the people. To favour therefore the liberty of the ſubject, they ſtruck at the liberty of the conſtitution,

tution, and they both periſhed together. Infinite were the miſchiefs that aroſe from thence. The conſtitution was deſtroyed at a time when the fire of civil diſcords had ſcarce left any thing of a conſtitution. The knights were no longer that middle order which united the people to the ſenate. The chain of the conſtitution was broke: it was founded on this principle, That none ſhould be enliſted as ſoldiers but ſuch as were men of ſufficient property to anſwer for their conduct to the public. The equites or knights, as perſons of greateſt property, formed the cavalry of the legions; but when their dignity increaſed, they refuſed to ſerve any longer in that capacity, and another kind of cavalry were raiſed. Thus Marius enliſted all ſorts of people into his army, and ſoon after the republic was loſt.

The knights were the farmers of the public revenues; and when the judiciary power

power was transferred to them, there was an end to virtue, policy, laws, magiſtracy, and magiſtrates. They bought up whole droves of ſlaves in Sicily to till their lands, and to take care of their cattle, but refuſed them a neceſſary ſubſiſtance, which forced theſe wretches, covered with beaſts ſkins, to arm themſelves with lances and clubs, and being followed by maſtiff dogs, to go out to the highways and rob. Thus whole countries were laid waſte, and the inhabitants could not call any thing their own but what was ſecured within the walls of towns. There was neither proconſul nor prætor that could or would oppoſe this diſorder, or puniſh thoſe ſlaves, becauſe they belonged to the knights, who were poſſeſſed of the judiciary power. The ſtrength and power of theſe ſlaves meeting with no check, kept pace with the inteſtine diviſions at Rome, till they became too formidable to be oppoſed by the Romans, who were forced to allow them ſome portions of land; but not being ſatisfied

ſatisfied with what was allotted to them, they commenced open hoſtilities againſt their maſters. Thus began the *civil war of the ſlaves*; who, being joined by the Barbarians, ſoon overran the Roman empire, broke in pieces that moſt glorious fabric of univerſal empire, and forced thoſe who gave laws to all the world to receive laws, in their turn, from a rude and ſavage people. For as all kingdoms and empires have their periods, ſo the time was now come when that enormous fabric of the Roman empire, which had diffuſed ſlavery and oppreſſion, together with peace and civility, over ſo conſiderable a part of the globe, was approaching towards its final diſſolution; which perhaps never would have happened had not the ſenate baniſhed their king, and the people depoſed the ſenate. For though kingdoms and empires have their periods of duration, yet their diſſolution is always brought about by ſome innovation that has crept into the conſtitution, and by ſome deviation

viation from the eſſential laws of government.

At the time when the war of the ſlaves broke out, Italy, the center of the Roman empire, removed for a long time from all concern in the wars, had entirely loſt her military ſpirit, and was peopled by an enervated race, equally diſpoſed to ſubmit to a foreign yoke or to the tyranny of their own rulers. The emperors found themſelves obliged to recruit their legions from the frontier provinces, where the genius of war, though languiſhing, was not totally extinct. Theſe mercenary forces, careleſs of laws and civil inſtitutions, eſtabliſhed a military government, no leſs dangerous to the ſovereign than to the people; and theſe barbarians, having added diſcipline to their native barbarity, could no longer be reſtrained by the impotent policy of the emperors; and being ſenſible of their own force, and allured by the

proſpect

proſpect of ſo rich a prize, the northern Barbarians, aſſiſted and directed by the Roman ſlaves, in the reign of Arcadius and Honorius, aſſailed at once all the frontiers of the Roman empire; and, having firſt ſatiated their avidity by plunder, began to think of fixing a ſettlement in the waſted provinces. This incumbent weight preſſed ſo heavily upon the Roman ſtate, by much unequal to ſuch a load, that it gave way, and broke in pieces.

The northern Barbarians who overturned the Roman empire, though diſtinguiſhed by different names, and divided into different kingdoms, were originally the ſame people. They had at firſt no diſtinct laws, but a few cuſtoms which they obſerved as laws; and they were ſo far from reducing them to any regular ſyſtem or body, that it was ſome time before they even thought of becoming legiſlators to the people they conquered. The Frank was tried by the law

of

of the Franks; the Aleman by the law of the Alemans; the Burgundian by the law of the Burgundians; the Roman by the law of the Romans: in ſhort, each individual was tried by the eſtabliſhed cuſtoms of his own people: And as the Germans were parted by marſhes, lakes, and foreſts, which ſtate of ſeparation they were fond of, each people apart were free and independent, till the dread of the Romans made them cling together, and brought about their general union; ſo when they came to be intermixed, the independency ſtill continued.

The ſpirit of perſonal laws prevailed amongſt thoſe people before they ſet out from their own homes, and they carried it with them into their conqueſts. We find in the codes of the laws of the Barbarians, that the children were to follow the law of their father; the wife that of her huſband: The widow came back to her own original

law; and the freed-man was under that of his patron. But if they were not pleaſed with that, every man might make choice of what law he pleaſed, provided he made his choice public.

France was at firſt governed by the Roman law, and by the different laws of the Barbarians, viz. Franks, Viſigoths, and Burgundians. In that part of the country ſubject to the Franks the Salic law prevailed, becauſe a perſon living under that law enjoyed greater advantages than if he lived under the Roman law. Where the Viſigoths inhabited, the national cuſtoms which Euric eſtabliſhed, determined diſputes amongſt them; and the laws of Gundebald ſubſiſted a long time among the Burgundians, in conjunction with the Roman laws. The Roman law, together with that of the Lombards, maintained its ground in Italy. But in Spain the law of the Viſigoths prevailed, and the Roman law was loſt, except in

in South Gaul, which was chiefly inhabited by Jews, who invited the Saracens to invade that part of the country, which they did, and forced the Goths to retire into Spain.

" After the " Barbarians " had ſubdued the " provinces of the Roman empire, they were, " after ſome time, obliged to eſtabliſh a ſyſtem " of government which might ſecure their " conqueſts, as well againſt the revolt of their " numerous ſubjects who remained in the " provinces, as from the inroads of other " tribes, who might be tempted to raviſh " from them their new acquiſitions. The " great change of circumſtances made them " introduce ſome alterations in the inſtitu- " tions, or rather cuſtoms, " which prevailed " among them while they remained in the " foreſts of Germany; yet they retained as " much of their ancient cuſtoms as was com- " patible with their new ſituation. The ancient Germans were very little removed from the original ſtate of nature when they ſubdued the Roman empire; but they

ſoon learned the uſe of writing from the Romans; and, in imitation of them, they wrote down their uſages, and digeſted them into a body. But in the unfortunate reigns which followed *Charlemagne*, the invaſions of the Normans and the civil wars again plunged the conquering nations into darkneſs, out of which they had partly emerged; and the light of ancient ſcience and hiſtory was much overclouded, and had very nearly ſuffered a total extinction in all Europe; and men ſunk every age deeper and deeper into ignorance, ſtupidity, and ſuperſtition. Reading and writing was quite neglected, and as they had paſſed from German cuſtoms to written laws, ſo they reverted from written laws to unwritten cuſtoms. Perſonal laws fell to the ground, and compoſitions, and what they called *Treada*, were regulated more by cuſtom than by the text of theſe laws. In order to remedy theſe evils the lands were divided into baronies and regalities, and two courts

were

were inſtituted to try all cauſes whether civil or criminal. The Salic, Viſigoth, and Burgundian laws came by degrees to be diſuſed among the French; and as fiefs firſt became hereditary there, France was the firſt kingdom where the feudal laws were digeſted into a regular ſyſtem and eſtabliſhed: for the country being divided into a number of petty lordſhips, which acknowledged rather a feudal than a political dependence, it was impoſſible for one law to be authoriſed. The kings of France diveſted themſelves of the right of ſending officers or deputies into the provinces to inſpect into the adminiſtration of juſtice and political affairs, and to enforce the obſervance of the laws, about the end of the ſecond race, when almoſt every thing was become a fief, and no common law could be obſerved. Before that, that nation, like all other kingdoms in Europe, was aſſembled, that is the lords and biſhops, (for the commons, as we ſhall by and by make

appear, were not then thought of) to have their ſolemn talk or parley. In theſe aſſemblies the king decided all cauſes, and enacted laws for after conduct: ſome had relation to political government; others to oecumenical; moſt of them, after the eſtabliſhment of chriſtianity, to eccleſiaſtical policy and civil government. Theſe laws were called *Capitularies*. But the clergy neglected theſe laws, and compiled a code of their own; which they collected from the canons of councils, and decretals of popes. They conſidered every reſtraint upon their privileges as impious, and took the ſubjection of their order to the ſecular power as the vileſt of all ſervitudes. Hence the churchmen oppoſed the capitularies with all their might. The aim of the eccleſiaſtics was to aſſert an independency on the ſtate, and for that purpoſe the pope was made a party in the diſpute; by whoſe intrigues the ſtruggles between the mitre and crown, which began very early, were kept

kept up in one ſhape or other till the total renunciation of the papal power here in England under Henry VIII.

In the days of popery the limits of the ſpiritual and temporal juriſdiction were little known, and as little obſerved: and the abuſes that crept into the eccleſiaſtical and civil courts, particularly the eccleſiaſtical, in the times of the darkeſt ignorance and ſuperſtition, were intolerable. Every man that died without bequeathing a part of his eſtate to the church, which was called *dying without confeſſion*, was deprived of the ſacrament, and of chriſtian burial. If he died without making a will, his relations were obliged to prevail upon the biſhop, that he would jointly with them name proper arbiters, to determine what ſum the deceaſed ought to have given in caſe he had made a will. Nay, the exceſs of their tyrannical oppreſſion was ſo great, that a perſon could not lie with his wife

the firſt night of their nuptials, nor even the two following nights, without purchaſing leave; and if he did not buy his licence of the prieſt, the man of God was to take his place the firſt, ſecond, or third night as he pleaſed: † from hence, perhaps, aroſe the ceremony of marriage. But the clergy, powerful as in time they became, were not ſuffered entirely to engroſs this privilege of cropping the flowers of virginity; the barons claimed that right over their *villains*, or tenants in ſocage, who were obliged to purchaſe their licence of their lords. And I am told, that in Scotland, where the Feudal Policy continued much longer than in England, that right was lately claimed by a baron of that kingdom. Hence aroſe the right of juſtices of the peace to perform the ceremony of marriage here in England. Before Suetonius Paulinus, in the reign of Nero, attacked Angleſey, the chief ſeat of the druids; deſtroyed all their conſecrated groves and altars;

† *miratile dictu.*

altars; and triumphed over their religion; the prieſts or druids poſſeſſed great authority. No ſpecies of ſuperſtition was ever more terrible than that of the druids. And, after they embraced the chriſtian religion, popiſh ſuperſtition and idolatry ſoon gained ground in the kingdom, and ſtill continues to hold its place in ſome neighbouring countries, which have not yet had reſolution to throw off that burdenſome load of ſuperſtition, which prieſtcraft has impoſed upon them.

Our kings gave the eccleſiaſtics grants of ſeignories, or fiefs, with the ſame privileges and juriſdictions as if they had been given to laymen; and as they received both from rich and poor, they acquired vaſt poſſeſſions and immenſe riches. But if our kings and people found a way of giving them their eſtates, they found alſo the method of getting them back again. The clergy had incomparably the beſt know-

ledge

ledge of the laws, and all of them to a man were profeſſors of the common law; *Nullus clericus niſi cauſidacus*, as William of Malmeſbury tells us. After the kings gave them fiefs, the biſhops and ſheriffs ſat together in judicature in the county-courts. This had been found a very convenient practice in the dark times of ignorance and ſuperſtition; for the preſence of the churchmen gave a ſanction to the determination of the temporal courts, and drew an extraordinary reverence towards them from the people.

We ſhall now conſider more cloſely the nature of the Feudal Syſtem, which was once the form of government eſtabliſhed in all the kingdoms of Europe. Some writers tell us, that the Feudal Tenures were introduced at the conqueſt; which is certainly a great falſehood, for they were eſſential to all the Gothic or German Inſtitutions.

According

According to the principles of the Feudal Policy, the king was the ſole proprietor of all the lands within his dominions, and all poſſeſſors who enjoyed the fruits or revenue of any part of it, held theſe privileges, either mediately or immediately, of him; for which they conſecrated their lives to his ſervice. Property was conditional. The land was a ſpecies of benefice, which was the original conception of the Feudal Property; and the vaſſal owed in return for it ſtated ſervices to his baron, as the baron himſelf did for his land to the crown. The vaſſal was obliged to defend his baron in war, and the baron, at the head of his vaſſals, was bound to fight in defence of the king and kingdom. All the rights which the people now enjoy, the great charter of ancient and modern date, were at firſt uſurpations upon the Prince; extorted from him by the neceſſity of his affairs, and were revocable at his pleaſure. The parliaments themſelves were creatures

of

of his will; their privileges were all derived from the ſovereign grant; for they made no part in the original frame and texture of the Engliſh government. Though the king ſometimes condeſcended to take their advice, they were abſolutely above the controul of the people. The law was but the will of the prince declared in parliament, or rather ſolemnly received and atteſted there, for the better information and more immediate obedience of the ſubject.

In the earlier times, agriculture was much neglected; people moſtly lived upon milk, cheeſe, and fleſh. The lands which were held of little account, except for paſturage, were allotted by the king to every individual as he pleaſed. Fighting, hunting, and following the flocks were at firſt the principal employment; and you might eaſier perſuade them to challenge the enemy, and to expoſe themſelves to wounds, than to cultivate the land, and to attend the

the cares of huſbandry. They refuſed to acquire by ſweat what they could purchaſe with blood.

Each prince had a multitude of men who were attached to his ſervice, and followed him wherever he went; they were truſty men, bound by their word to follow the king to the field; to whom he gave the war-horſe and javelin; and they performed very near the ſame ſervice as was afterwards performed for the fiefs: for in thoſe days their fiefs conſiſted rather in horſes trained for war, in arms, and feaſting, than in lands; though the lands too were given them by the king.

The dignity and power of a prince conſiſted in being conſtantly ſurrounded by a multitude of theſe truſty men, called by the Normans, Comites, Counts, or Companions; (tho' count came afterwards to be the name of office, not of honour) by the Saxons, Coples; by the Germo-Saxons, Thanes; by the Franks

Franks or French, Antruſtios qui in truſte dominica ſunt, as Leudes and Fideles, faithful and loyal men; and in latter times, Seniors, Barons, Knights, or Lords.

They were an ornament to the king in time of peace, and a defence in time of war. They were not ſuch becauſe they were poſſeſſed of a fief, but they had a fief given them becauſe they were truſty men, as a reward for their ſervice. They had not at firſt, as they afterwards had, the ſame fief; becauſe they were given *beneplacito regis*, out of the free good will of the king, and during his pleaſure; but, though they had not the ſame, yet they had another: for it was the intereſt of of the nobility to have them, and the intereſt of the king to give them.

Theſe families were diſtinguiſhed by their dignity of truſty men, and by their prerogative of being qualified to vow fidelity

lity for a fief. When the king led them out to battle againſt a neighbouring nation, if they were victorious, they did not extirpate the ancient inhabitants of the country which they ſubdued, but they ſeized their lands and took their perſons under protection. The king, who was general of the victorious and conquering army, which he was obliged to continue in a military poſture, and in great ſubordination under him, in order to ſecure themſelves from the revolt of the numerous natives whom they had bereaved of all their properties; the king, I ſay, who was general, judge, and landlord, divided the conquered lands, under the name of fiefs or bocklands, among his chiefs, reſerving what portion he pleaſed to ſupport his own dignity and government. And at firſt the king's demeſnes, or the portion of land which he reſerved for his own particular uſe, furniſhed ſubſiſtence to his court, and defrayed

frayed the ordinary expences of government.

The immenſe fortunes which the general beſtowed upon his chief captains ſerved to ſupport their dignity, and in time of peace to render them formidable to the ſovereign. For it is natural to ſuppoſe, that when they were ſettled, and found themſelves in quiet poſſeſſion of ſuch princely revenues and juriſdictions, they would aſpire at independency. We find the great earl of Warrenne, when he was queſtioned concerning his right to the land which he poſſeſſed, drew his ſword, which he produced as his title.

No tax was then levied upon land. The expreſs condition of all the king's grants was, that they might be reſumed at pleaſure; and that the poſſeſſor, ſo long as he enjoyed them, ſhould perform military ſervice, and be ready to take the field for the

the defence of the nation, and for other expeditions.

For ſome time this was the only tax they paid; any other burthen would have appeared intolerable to men, who received their eſtates as the reward of their valour. The lands were given as a military pay; becauſe their ignorance in the art of finances rendered it impoſſible for the king to levy taxes ſufficient for the payment of his army. The king's vaſſals, or barons, had vaſſals under them called freemen.

The *liberi homines*, or freemen, moſt properly were thoſe who held in military or knight ſervice; and, in this ſenſe of the words, all the earls, barons, knights, and others that held knights fees, or part of knights fees, were called and eſteemed freemen. Of theſe freemen there is often mention in William the Conqueror's laws. "Volumus etiam & firmiter præcipimus & concedimus ut *omnes liberi* homines totius

monarchiæ regni noſtri, teneant terras ſuas & poſſeſſiones libere ab omni exactione injuſta & ab omni *tallagio*, &c. ita ut nihil ab iis capiatur niſi *ſervitium* ſuum *liberum*," &c. This was *military* ſervice, called free in reſpect of other baſe ſervices. "Statuimus etiam & firmiter præcipimus ut *omnes liberi homines* totius regni, ſint fratres conjurati ad monarchiam noſtram defendendam."

"Statuimus etiam & firmiter præcipimus ut *omnes comites*, & *barones*, & *milites*, & *ſervientes*, & *univerſi liberi homines*, totius regni habeant & teneant ſe ſemper bene in *armis* & in *equis* ut decet & oportet, & quod ſint ſemper *prompti* & bene *parati* ad *ſervitium* ſuum integrum nobis explendum & per agendum cùm ſemper opus fuerit, ſecundum *quod* nobis de *fœdis* debent & tenementis de *jure* facere." Selden's notes on Eadm. LL. 55, 59, 58.

Theſe *liberi homines* were the ſame in all three laws. Berault, upon the cuſtoms of Normandy,

Normandy, gives a brief account of *free-fees*, and *freemen* or *gentlemen* : "Sur le declin de l'empire Romain les Francois (ainſi dit de Franconie province d' Alemagne) après avoir conqueſté les Gaules, ſur les Romains à limitation d' iceux diſtribuerent les domaines de leur conqueſts aux ſoldats qui avoient eſté avec eux victorieux & iceux retinderent à eux ſeuls la dignité d'eſtre *gentiles hommes*. Pour avoir droit de manier les armes, & aux Gaulois vaſſieus qui eſſoint les anciens habitans du pays appellez *Returiers* ils oſterent l'uſage des armes leur reſervant *menage* ruſtique & la *marchandiſe*. De ce tems la eſt venue la diſtinction des *nobles* & des *returiers* ne penuent tenir *fief snobles*. Car il eſt certain que tous perſonnes n'eſtoient pas anciennement capables de tenir *fiefs nobles*, il n'y avoit que les hommes nobles *francs* & exempts de payer *tailles* & *ſubſides*, c'eſt pourquoy tels *fiefs* eſtoient appellez *Francs*." But in France as well as here, in proceſs of time, the law became more eaſy : by the re-

laxation of the Feudal Law, and daily uſe, all men became capable of purchaſing, holding, or receiving, *ex dono*, theſe *fees*; however thoſe that held them were moſt properly accounted *freemen* or *free-tenants*.

"Willielmo filio Hen. primi omnes *liberi homines* Angliæ et Normanniæ cujuſcunque ordinis et dignitatis, cujuſcunque domini *fideles* manibus & ſacramento ſe dedere coacti ſunt." Theſe were all tenants in military ſervice, and all feudatories or vaſſals of what lord ſoever.

Florence of Worceſter relates how the nobility performed this. "Conventio *optimatum* & *baronum* totius Angliæ apud Sereſberiam 14 Calendarum Aprilis facta eſt. Qui præſentia regis Hen. *homagium* filio ſuo Gulielmo fecerunt, & fidelitatem ei juraverunt.

Cadmer ſays, "13 Calend. Aprilis factus eſt conventus *epiſcoporum*, *abbatum* & *principum* totius regni apud Serberiam cogente eos

eos illuc ſanctione regis. Igitur agnita regis voluntate mox adnutum ejus omnes principes facti ſunt homines ipſius Willielmi, fide & ſacramento confirmati. Radulphus autem archi-epiſcopus Cantuarienſis & alii epiſcopi atque abbates regni Anglorum & regni coronam ſi defuncto patre ſuo ſuperviverent in eum, omiſſa omni calumnia & occaſione tranſlaturos, eique cum rex foret hominia fideli mente facturos." In a war, 14 Johan. To all the ſheriffs in England, the noted and uſeful freemen are diſcovered: "Summone per bonos ſummonitores, *comites*, *barones*, *milites*, & omnes *liberos homines* & ſervientes, vel quicunque ſint, vel de quocunque teneant, qui arma habere debent, vel arma habere poſſunt, & qui *homagium* nobis & ligantiam fecerunt," &c. Mat. Paris, Fol. 233. "Rex dilectis & *fidelibus* ſuis *militibus* & *liberis hominibus* de Com. Southampton, &c. vobis rogamus mandantes, &c. ad nos ſitis cum equis & armis & toto poſſe veſtro apud Oxon,"

gant duos legales *milites* de quolibet hundredo vel wapentachio, & illi *duo* eligant ſupra ſacrum ſuum *decem milites* de ſingulis hundredis vel wapentachiis, vel ſi milites defuerint, legales & *liberos homines*, ita quod illi duodecim in ſimul reſpondeant de omnibus *capitulis* (all the articles) de toto hundredo." Bracton ſays, "Quatuor milites eligebant in quolibet hundredo 12 *milites* vel 12 *liberos* & *legales homines*, ſi *milites* non inveniantur, to be jurors in pleas of the crown, coram *juſticiariis* in comitatibus." Heta has it, that theſe four ſhall chuſe *twelve* de *melioribus* de qualibet ballivia, that is hundred or wapentake.

The great barons, to whom the king parcelled out the lands, firſt choſe a place for their own habitation, and affixed to it a plentiful portion of land for the maintenance of their family, which they called *terre dominice*, *demeſne lands* or *manors*; which the learned Gloſſariſt ſays is a Norman word, and brought from thence; and what the Saxons called a *prædium* or *villa*, their poſſeſſions in

to be found in the vicenage or the county, whether or how the demandant or tenant could have right done them? The Magna Charta tells us, that the aſſizes of *Novel Diſſeiſin*, and *Mort d'Anceſtor*, ſhall be taken in the counties by the *juſtices* and *knights* of the ſhire, which afterwards dwindled into *freeholders* of 40*s. per annum.* Of theſe men it is, and their ſervices, that *Bracton* ſays, they were ſo notoriouſly free, that in writs of right it was never mentioned, becauſe ſo well known: "notandum in ſervitio *militari*, non dicitur per *liberum ſervitium*, & ideo, quod conſtat, quia tale *ſervitium liberum eſt.*"

Theſe were the men that were jurors, and made preſentments in pleas of the crown, according to the forms of proceeding in them.

Forma procedendi in placitis corone regis.

Imprimis elegendi ſunt 4 *milites* de toto comitatu, qui per ſacramentum ſuum eli-

militari cingulo, quo equites creabantur, ſed a *militari feodo* (quo alias poſſeſſor & libere tenens nuncupatus eſt) nomen ſumpſit." For a *miles* which was called a baron, took not his name from the *military girdle*, with which knights were created, but from the military fee, by reaſon of which he was otherwiſe called a *poſſeſſor* or *free-tenant*; and ſo Camden, Brit. fol. 123. "*Milites* primo apud nos appellati fuerunt, qui prædia beneficiaria tenuerunt ut militarent." They were firſt called with us *milites* which, becauſe they went to *warfare*, had lands given them. Yet moſt, if not all the great *barons*, as alſo the tenants *in capite*, and ſome others that held many *knights-fees* of mean *lords*, and were poſſeſſed of great eſtates, were actually *knights*, created by CEREMONY; that is, they were *balteo militari cincti* or *ornati*, girt by the king with the *military* or *ſoldiers belt*, as the cuſtom was in thoſe times, when it was reputed a very great honour to be ſo *knighted*

or

or *girt*; and from thence, as well as from their *fees*, barons were frequently ſtiled *milites* and *chevaliers*; as Selden aſſures us, that in the writs of *ſummons to parliament*, *pleadings*, or other legal inſtruments, moſt commonly the word Baron is wholly omitted, and Chevalier uſually ſupplies it, as an addition in the parliament writs to the temporal barons. And, from the *Pipe Rolls* in the time of Henry II. he ſays, they had *heads* de *ſcutagiis baronum Angliæ*, de *exercitu* Walliæ; & de ſcutagiis baronum, qui non abierunt cum rege in exercitu qui non Gualweiæ; de ſcutagiis baronum qui non abierunt, nec milites, nec denarios miſerunt & exercitum Hiberniæ, Gualweiæ, Walliæ:" That is, of the ſcutages of the barons of England; of the army of Wales; of the ſcutages of the barons which went not with the king in the army againſt the Scots; of the ſcutages of the barons who went not in, nor ſent their milites, or money, to the army of Ireland, Scotland,

land, Wales. And ſays further, that under thoſe *heads* the names of the barons of counties, where the heads are placed, occur together with the number of the knights (or knights fees) for which they paid their eſcuage; and the ſame kind of tenants in chief, or barons, are oftentimes alſo, in the rolls of the ſame time, indifferently called *milites* in *heads* of the ſame ſyllables, ſaving that *militum* ſupplies *baronum*, which agrees with the uſe of latter ages, wherein *miles* and *chevalier* have been ſo proper and uſual in the expreſſion of them. So that all the great barons and the leſſer barons of the firſt order were knights by their tenure, and as it was even an honour to them to be girt by the king with the belt, they were knights alſo by ceremony. Some of the leſſer barons of the loweſt order, or ſoc-men, were admitted to the order of knighthood by ceremony.

The

The freemen, knights, milites of the ſecond order, or barons' vaſſals, paid for their lands, rent, ſervice, and attendance in peace and war: they ſtood in the ſame capacity to the baron as he did to the king. The vaſſals of the baron were immediately dependent on him, owed attendance at his court, and at his ſummons paid all their duty to the king through that dependence, which their lord, by his tenure, was obliged to acknowledge to the king his ſovereign and ſuperior. The barons were peers of the realm, and their vaſſals or freemen were peers of the barony. The vaſſals poſſeſſed a ſubordinate rank within their diſtrict; the barons enjoyed a ſubordinate dignity in the great aſſembly.

The freemen were obliged to follow their count to the army, mount guard, and patrol; to furniſh their own horſes, to get carriages for the baggage to the king's commiſſaries, and to the ambaſſadors to

and

and from court. If they were not ſufficient for the maintenance of one ſoldier, yet, according to the quantity of land they enjoyed, they contributed ſuch a ſhare as was agreed for: half a third, a fourth, or leſs part, according to the ſmallneſs of the portion of the fee granted towards the lord's military expences. The freeman who poſſeſſed *quatuor manſos*, four manors, or more properly four knights fees, was obliged to march againſt the enemy. He that had but three was joined with a freeman that had one; the latter bore the fourth part of the other's expences, and ſtaid at home. In like manner, he who had two knights fees was joined with one that had the ſame number, and the freeman that ſtaid at home bore half the charges of the one that went to the army. Accordingly thoſe great men or lords could raiſe at pleaſure numerous bodies of men, whom, by keeping large armories and vaſt ſtables of horſes, they could, upon a very ſmall

ſmall notice, equip for war; and the crown being intitled to the ſervice of all the nation, both the barons that held lands immediately of the crown, and likewiſe of their tenants, could raiſe a numerous army at the ſhorteſt notice.

As ſome of the freemen went to the field while others ſtaid at home, this introduced a diſtinction of them into two claſſes, the higher and the lower. The higher conſiſted of thoſe who followed the great barons to the field, and had a right to vow fealty for a fief; and moſt of this order became barons, and were then called Knights, or Leſſer Barons, to diſtinguiſh them from the other barons. Some of them held immediately of the king, and were his leſſer military tenants or *ſithcunmen.*

The other claſs of freeholders was thoſe that were induſtrious, and ſtaid at home and cultivated the ground; they were a kind

kind of Ceorles or huſbandmen, and ſeem not to have been intitled to vow fealty for a fief. They were alſo called Tenants in Socage, and after ſome time could not be removed, more than the military tenants, at the pleaſure of their baron.

In a book wrote in anſwer to *Petit*, the author has theſe words: "Other freemen there were in thoſe times, but what their quality was, further than that their perſons and blood were free, that is, that they were not *nativi* or bondmen, it will give a knowing man trouble to diſcover it to us." We find in every leaf, and almoſt every entry upon that leaf, of Domeſday *ſoc-men*, and *liberi homines*, poſſeſſors of ſmall parcels of land, but what their quality was, and of what intereſt in the nation, *dicat Apollo?* Soc-men were privileged men, "fuerunt liberi homines qui potuerunt ire quo voluere." What the privileges they enjoyed at that time were, or whether all had the

the ſame privileges, ſays the author, no man knows diſtinctly. There were many ſorts of ſoc-men; they were nothing alike.

There were beſides theſe liberi homines *free tenants*, which perhaps might not always be freemen. King John, *anno Domini* 1202, by Galfrid Fitzpetre, juſticiary of England, wrote letters to all the earls and barons to perſuade and induce them to collect the fortieth part of their rents towards the relief of the Holy Land, of every of their towns, as it might be let to farm by the year, "Et ſi in eadem villa fuerint per ſervitium *militare* tenentes dent quadrageſimam portionem modo prædicto, ſi autem fuerint liberi tenentes ſimiliter dent eandem portionem modo prædicto, *computato reditu*, quem dominis ſuis ſolverent per annum."

Very little account was held either of the ſoc-men or free tenants; they were obliged to be bound for one another's good

behaviour. And we ſay, concerning *Lord-leſſe* men, againſt which no man can have right, that his kindred be commanded to bring him to right, and find him a lord, or *ſide-juſſor*, to undertake for him in the *folk-mote*.

The great baron diſtributed a third ſhare of his lands to ſuch as performed all *ruſtic* and *ſervile* works, repaired his *houſes*, ploughed and ſowed his *lands*, reaped his *crop*, carried it into the *barn*, thraſhed it, digged and hedged, and took care of his *flocks* and *fields*. The precincts of this diſtribution were governed by ſuch *laws* as the lords impoſed: and as their eſtates aroſe from his beneficence, ſo they depended on his will; hence ſo many cuſtoms in the ſeveral manors.

The lord's houſe was the *aula*, *hall* or *court*; and all the tenants, if need required, were bound to attend there every three weeks, but generally at the Feaſt of the

the *Annunciation* and St. *Michael*; from whence theſe courts, kept at thoſe times, were called *Curiæ Generales*, or *General Courts*.

The freemen held of the great barons by the ſame *tenures* and under the ſame *forfeitures* as their lords held of the king. For by the Feudal Law ſub-fees were to be given and taken according to the laws of the firſt inſtitution of the *capitals royal* or *great fees*, which held immediately of the prince. And therefore, as the capital barons had their courts within their juriſdiction, in which all or moſt matters, relating to, and ariſing between, their tenants, were ordered and decided; and they were only held at the chief ſeats of their baronies, or perhaps where they had any conſiderable lands or poſſeſſions; ſo had the freeholders their courts for adjuſting matters within their juriſdictions.

As the freemen held their lands of the lord by grant or beneficence, they were not only revocable at the will of the lord, patron, or donor, when he pleaſed; and at any time when he would, might take them away from the beneficiary poſſeſſor, or feudatory; but were ſubject to the ſame forfeitures as the grand fief. And by committing felony, or non-performance of any of the ſtatute ſervices, upon conviction the freeholder forfeits his lands, and they eſcheat to the lord; ſome by preſentment of the homage; others immediately where the fact is notorious.

The freemen at firſt paid but little regard to the tilling of ground; that was left to the bondmen or villains, who had a right of villainage. Moſt of the villains were either natives of thoſe countries which the king and his comites conquered, or a part of the ſcum of the victorious army.

army. They were the property of their lord, and incapable of holding or enjoying any property. They were only allowed for their labour juſt enough to keep them alive; and with drudgery, poverty, and ill uſage ſo depreſſing their ſpirits, they could never aſpire to any part of the concerns of the public. They were by far the moſt numerous rank of people. Dr. Brady aſſures us that the leſſer freemen, loc or huſbandmen, were very few in number, and that the greater part of the lands of all England were occupied by the villains.

There were two kinds of ſlaves among the Anglo-Saxons: *houſehold ſlaves*, after the manner of the Romans; and *prædial* or *ruſtic*, after the manner of the Germans.

The villains were not allowed to increaſe their fortunes by alliance; they could only marry among themſelves. For by the Feudal Laws of England the ſuperior

lord was prohibited to marry his female ward to a burgeſs or a villain; ſo near were theſe two ranks eſteemed to each other, and ſo much inferior to the nobility and gentry. Both the villains and burgeſſes were long held of ſmall account.

The whole property of the kingdom was in effect in the power of the barons; that is, ſuch as held *in capite* of the crown by knight's ſervice. It appears that towards the end of the Conqueror's reign, the number of thoſe tenants in chief was about 700.

As the whole ſtrength of the kingdom lay in the ſoldiery, that is in thoſe who held by knight's ſervice, either immediately of the crown or of the meſne lords, the remainder of the people were conſidered in the light of ſlaves or ſervants, and contributed noways to the national ſupport, than by the cultivation of the ſoil, which

was

was their buſineſs and ſole employment, which left their maſters at leiſure to attend with leſs diſtraction on their military ſervices. No regard was paid to any but the men of arms; and as every other occupation was of courſe accounted baſe and ignoble, it is not to be wondered that ſuch a difference was made between the condition of prædial and military tenures.

The lands which the villains occupied and cultivated, being held in fief, at the will of the king, by the barons or great officers, who, when they diſobliged or any how became diſagreeable to the king, were deprived of their fief, which was given to another; ſo the freemen held them in fief of the lord, who, agreeable to the genius of the Feudal Government, which is uniform in all its parts, gave them at firſt during his pleaſure, and took them back when he pleaſed. The bondmen had as uncertain a tenure of the lands which they

occupied; they paid their rents either in corn, cattle, or other produce of the land, or in ſervile offices, which they performed about the baron's family, and upon the farms which he retained in his own poſſeſſion. Thoſe ſervices were in a great meaſure arbitrary, and they could expect no redreſs of injuries in a court of barony from men who thought they had a right to oppreſs and tyranniſe over them. In proportion as agriculture improved and money increaſed, it was found that theſe ſervices, though extremely burthenſome to the villain, were of little advantage to the maſter, and that the produce of a large eſtate could be much more conveniently diſpoſed of by the peaſant himſelf who raiſed it, than by the landlord or his bailiff who were formerly accuſtomed to receive it. A commutation therefore was made of rents for ſervices, and of money rents for thoſe in kind. And as men in a ſubſequent age diſcovered that farms were

better

better cultivated where the farmer enjoyed a ſecurity of poſſeſſion, the practice of granting leaſes to the peaſant began to prevail, and villainage went gradually into diſuſe throughout the moſt civiliſed parts of Europe.

The bondmen, beſides their rent to the landlord, paid a cenſus tax, or acknowledgment to the king; which was, as we ſhall ſee, raiſed by the king with the advice of his clergy and lords. The reſt of the people were bound to military ſervice. The greater and leſſer barons, or vaſſals of the crown, in conſequence of their fief; and the freemen in conſequence of their privileges. The name of freeman was only given to thoſe, who on the one hand had no benefices or fiefs, and on the other were not ſubject to the baſe ſervices of villainage: the lands they poſſeſſed were called *Allodial Eſtates*. Yet the military freemen, as I ſaid before, enjoyed the prerogative

rogative of being qualified to vow fealty for a fief, and conſequently to enter into the order of nobility.

Lands, as I before obſerved, were given the ſoldiers in conſideration of their military ſervice, as their pay. But there is a great difference in conſequences between the diſtribution of pecuniary ſubſiſtence, and the aſſignment of lands burdened with the condition of military ſervice. The delivery of the former at the weekly, monthly, or annual terms of payment, ſtill recalls the idea of a voluntary gratuity from the prince, and reminds the ſoldier of the precarious tenure by which he holds his commiſſion; but the attachment naturally formed with a fixed portion of land, gradually begets the idea of ſomething like property, and makes the poſſeſſor forget his dependant ſituation, and the condition which was at firſt annexed to the grant. It ſeemed equitable, that one who had cultivated

tivated and ſowed a field ſhould reap the harveſt: hence fiefs which were at firſt entirely precarious, were ſoon made annual. A man who had employed his money in buying, planting, or other improvements, expected to reap the fruits of his labour, and expence: hence they were next granted during a term of years. It would be thought hard to expell a man from his poſſeſſions who had always done his duty, and performed the conditions on which he originally received them: hence the chieftains, in a ſubſequent period, thought themſelves intitled to demand the enjoyment of their Feudal Lands during life. It was found that a man would in battle more willingly hazard his life, if aſſured that his family ſhould inherit his poſſeſſions, and ſhould not be expoſed by his death to want and poverty: hence fiefs were made hereditary in families, and deſcended, during one age, to the ſon; then to the grandſon; next to the brothers; and

and afterwards to more diſtant relations. But as they were at firſt given, ſo they always remained, under conditions of fidelity, fealty, or faithfulneſs to the lord, and military ſervice when he commanded it; and, anſwerable to theſe conditions, there were alſo ways of loſing fees, as breach of truſt, which was called felony, and varied according to the difference of places, in ſome for leſſer, in others for greater, ingratitude. And, for want or defect of ſervice, the fee or land given for it returned to the lord; and in caſe of an infant or woman, who were neither of them fit to perform military ſervice. Yet it was thought unjuſt they ſhould loſe their fee or eſtate; therefore they or their eſtates were in *guard* or *ward* to the lord, and were called his wards, and the ſervice by him provided for, until the male infant was of age and trained up, and made fit for the ſervice he was to perform; or the woman, by his conſent, had taken ſuch a

huſband

huſband, of whoſe fidelity he was aſſured, and by whom ſhe might perform the ſervice to which, by virtue of her fee, ſhe was bound.

In the progreſs and ſettlement of the Feudal Law the male ſucceſſion, according to the inſtitution of Romulus, had taken place ſome time before the female was admitted. The eſtates, being as military benefices not as property, were tranſmitted to ſuch only as could ſerve in the army, and perform in perſon the conditions upon which they were originally granted. But after the continuance of rights during ſome generations in the ſame family had, in ſome meaſure, obliterated the primitive idea, the females were gradually admitted to poſſeſſion of feudal property.

The ſame revolution of principles which procured women the inheritance of private eſtates naturally introduced their ſucceſſion to government and authority. Thus the idea

idea of property gradually ſtole in upon that of military pay; and each century made ſome ſenſible addition to the ſtability of fiefs and tenures; but it was long before they became firm, certain, and permanent. We find ſome fiefs were very early held in perpetuity, and others by grant for a certain time; yet in their moſt precarious ſtate they were neither given nor taken away in a capricious and arbitrary manner, till corruption had entered, and poſſeſſion of fiefs, like that of counties, was continued for money.

In the reign of Charles the Bald it was enacted, that feudal lands ſhould deſcend to the ſons of the preſent poſſeſſor; yet not at firſt to the eldeſt ſon, but to him whom the king ſhould chuſe. Nor did this law affect eſtates only, but offices, which had hitherto been only beneficiary. The counts and marquiſſes, which are names of offices, not titles of honour, were ſent

at firſt into their diſtricts by the king for a year; but being induced by the profitable perquiſites ariſing from their office, they ſoon purchaſed the continuation of their commiſſions, and what was at firſt only a temporary gift, was, by the encroaching ſpirit of the counts, ſoon converted into a right, and rendered hereditary. So the ſons of counts were to ſucceed to the authority of their fathers, and to the benefice annexed to it. Thus it is to this day in the parliaments of France; which, as they are very different from thoſe in England, I ſhall take this opportunity to give the reader a ſhort account of them.

The barons, by whoſe advice the king gave judgment, were at firſt very illiterate: no leſs a perſonage than a conſtable of France, who was the moſt famous man in his time for perſonal bravery, and ſkill in war, was ignorant of his four and twenty letters. At firſt, when cauſes were

were few, they made a ſhift to give judgement and to provide for the common exigencies of ſtate; but as cauſes, cuſtoms, laws, and regulations multiplied on the one ſide, and a total ignorance remained on the other, it became neceſſary that ſome order of men or other ſhould dedicate themſelves to the profeſſion of the law, and become expert both in writing and explaining the conſtitution of the country. Now the perſons who devoted themſelves to ſuch employments were, generally ſpeaking, much below the king's companions, and yet ſuperior to the common race of freemen. Their general appellation was *les gens des loix*, the men of the law, a term of ſome honour and dignity, but by no means on a par with *les gens des l'epée*, the men of the ſword. However, from what hath been ſaid, it evidently appears, that the king was under a kind of neceſſity of retaining

a good number of theſe *les gens des loix*, or lawyers, about his perſon, both for the purpoſes of writing down the ordinances and reſolutions, and alſo of explaining the nature of the laws and cuſtoms of each particular province through which he paſſed, or on which he ſat in judgment. This humour of progreſſing, as well in times of peace as in times of war, was not peculiar to France, for you may find various inſtances of it in the hiſtory of England; viz. that the king with his nobles kept their Chriſtmas, their Eaſter, or their Whitſuntide, at ſuch or ſuch a town, as York, Northampton, Glouceſter, &c. and then held a tournament, or a parliament, or perhaps both; and all perſons who had any cauſes depending in his courts were obliged to dance attendance after him in theſe ſtrolling expeditions. In England too the king had a particular order of barons called the Crown Barons,

anſwering to the French *les gens des loix*, who dedicated themſelves more particularly to the ſtudy of the law; but the profeſſion of the law in England was, for ſome time, moſtly in the hands of the clergy.

Philip the Fair, of France, about the beginning of the 14th century, put an effectual ſtop to theſe evils, by fixing two parliaments in the two capitals of his kingdom, Paris and Toulouſe, who ſhould adminiſter juſtice to his ſubjects, whether the king and his companions were there or not. Theſe parliaments have been increaſed from time to time to twelve; which is, I believe, the preſent number: And they are inveſted with very ample and extenſive powers. For firſt, They are deemed to be courts of record of ſuch vaſt importance that no edicts of the kings are commonly allowed to be authenticated, and therefore valid, until the parliament

liament has regiſtered them: Secondly, They are courts of judicature in the higheſt ſenſe, both civil and criminal. In civil caſes they proceed as much according to the equity of the caſe as the letter of the law, and therefore ſuperſede a court of chancery: Thirdly, They have the power of ſearching for and finding out freſh cauſes, as well as for determining ſuch as are regularly brought before them; which power is exerciſed by one of their principal members, under the ſpecious pretence of rectifying abuſes and redreſſing grievances: And fourthly, They are attended with a kind of body-guard to execute their commands, who all ſwear obedience to them. Theſe law-parliament men repreſent no part of the kingdom whatever, lords or commons; nor are they elected by the freemen or freeholders of the realm: nor yet can it be ſaid at preſent that any perſon whatever, even the king himſelf, doth properly appoint

them. To unravel this myſtery I muſt obſerve, that it hath been a pernicious cuſtom of a long ſtanding in France, when their finances were low, and when they wanted money on an emergency, to create new offices (charges) of various kinds, more particularly in the law, and to ſell them, and the inheritance of them, for ever. By theſe means almoſt every poſt in every court of judicature throughout the kingdom is openly to be transferred by bargain and ſale, like other articles of traffic, becauſe it was originally purchaſed for a valuable conſideration; and becauſe the proprietor of it may either ſell the perpetual inheritance, or the next avoidance, juſt as it ſhall pleaſe him; or he may place one of his own family in it as ſoon as it ſhall become vacant, after he has paſt through a few examinations *pro forma*, and the ceremonial of admiſſion. Hence therefore it neceſſarily follows, that in France the profeſſion of the law becomes a kind

a kind of family inheritance, where the ſon ſhall ſucceed to the father, and the grandſon to the ſon, for many generations. Hence alſo it will ſometimes happen, in ſpite of all regulations, that a beardleſs boy, or *petit maitre*, ſhall fill the poſt of the moſt venerable magiſtrate in the realm; nay, that men of characters ſtill more exceptionable ſhall intrude themſelves into the higheſt ſeats of juſtice; and, what the French lament the moſt of all, and which they ſtrive moſt zealouſly to correct, is that upſtarts, men of obſcure families, raiſed by trade, or enriched by farming the revenues, ſhall purchaſe ſuch offices when vacant, and riſe up into dignity and honour. Hence alſo you may conclude, that men who have acquired their ſtations by ſuch means as theſe, and rendered them hereditary in their families, will neither be the firſt to curtail their own power, or leſſen their own importance, nor to ſhorten the proceſſes of law, reduce

the number of law-ſuits, or diminiſh the fees and expences attending them. The parliaments, having been conſtituted in the manner deſcribed, were not likely to continue long at one ſtay without loſing or gaining ground. It is eaſy to ſuppoſe which of the two they would attempt. Therefore, from their inſtitution we muſt date the riſe of two great and oppoſite factions in France; viz. the parliaments on one ſide, and the king's council on the other. The king's council, as in England, are nominated by the king himſelf; and are compoſed of the great officers of ſtate, with the princes of the blood, and as many of the firſt nobility as the king ſhall pleaſe. To theſe are added a ſufficient number of perſons eminent in the law, with the chancellor at their head. The two parties thus drawn up, attack each other in the following manner: The courtiers, and the advocates for the king's council, reproach the parliamentarians as upſtarts, raiſed from

from the dregs of the people, who, before the reign of Philip the Fair, were no better than clerks to the royal court of judicature; that Philip, in making this court ſtationary which was before itinerant, by no means intended to raiſe theſe low-born ſcribes above his nobles and himſelf, but merely to relieve his ſubjects from the trouble of attending his courts during his progreſs; and as he created two parliaments for this purpoſe, viz. Paris and Tolouſe, he might have created two hundred more if he had pleaſed. As to the right of inrolling the king's edicts, concerning which the parliaments have made ſo great a ſtir, the whole was originally this: A king's edict being the law of the land muſt be inrolled ſomewhere, that it might remain ſecure from forgery, that copies might be taken, and originals conſulted, when neceſſary. At that juncture the parliaments was the fitteſt regiſtry, as being the only general court in the

kingdom. But ſince the uſe of poſts and printing, proclamations may be inſtantly circulated throughout the nation. Therefore, when the late regent, the duke of Orleans, was inſulted by the parliament, who refuſed to regiſter his edicts, he immediately erected another court for that particular purpoſe, and baniſhed the parliament for their inſolence. Beſides, ſay the courtiers, theſe are but the ſhadow of ancient conſtitutional parliaments. They are choſen by nobody, nor do they repreſent either the landed or trading intereſt of the realm, yet, having purchaſed certain venal offices, they riſe into importance by robbing the king of his prerogative, the nobility of their patrimonial rights, and the clergy of their eccleſiaſtical privileges and juriſdiction. The advocates for the parliament in their reply obſerve, that the families of the law have ever been upon a reſpectable footing, though not derived from the higher orders of nobility. As

to

to the reproach of obtaining the magiſtrate by ſale, they retort the accuſation. That they repreſent no order of men in the ſtate is not their fault. The princes of the blood, with the higher nobility, eccleſiaſtical or temporal, who are ſtiled peers of the realm, forty-eight in number, are intitled to ſeats in parliament; nay, formerly all the king's companions had the ſame right, which the parliament greatly wiſhes they would reſume, as a body thus compoſed of all the nobility, from princes to counts, would properly repreſent the landed intereſt. The trading intereſt is a thing of late date, the deputies from cities and towns not having made their appearance in any national aſſembly till ages afterwards. As to the creating of new courts of parliament, and aboliſhing the old ones, they ſay that no king of France could do it without deſtroying the conſtitution of the monarchy. This is the nature of the French parliament; and

thus

thus ſtand the diſputes between the king and them, which muſt ſoon terminate ſome way.

In the eſtabliſhment of the Feudal Syſtem we have ſeen the gradual progreſs which was made to render fiefs hereditary; which we may be ſure was not done at once, but by degrees. The family of Charlemagne loſt the empire; they reſiſted with great difficulty the incurſions of the Normans; and in the year nine hundred and eleven, Normandy was granted to them as an hereditary fee. The great lords made their advantage of the public calamities; they defended the king on what terms they pleaſed: if not complied with in their demands they refuſed their aſſiſtance in the moſt critical conjunctures; and, before the acceſſion of Hugh Capet, had entirely ſhaken off their dependence on the crown. It is a great and vulgar miſtake to ſay, that this great revolution

was

was the effect of Hugh's policy; on the contrary, the independence of the nobles, already acquired, was the cauſe of his ſucceſs. For as early as the firſt princes of the Carlovingian line, the lands of France were of two kinds, allodial and beneficiary. The allodial were eſtates of inheritance, deſcending, in the ſame family, in a lineal ſucceſſion, from the firſt family to whom the grant was made. They alſo became alienable. The perſons poſſeſſing the allodial lands were called *hommes libres*. The beneficiary lands were held as the allodial originally were, by grant from the king for life, or a term of years at the will of the king, and reverted to him on the expiration of the term for which they were granted. The perſons poſſeſſing the beneficiary lands were called *leudes*; the ſubtenants, *vaſſals*.

At the time of Hugh Capet's uſurpation the prince had no authority left but over

over his own demeſnes, which were leſs conſiderable than the poſſeſſions of ſome of his vaſſals: Hugh had one of the largeſt fiefs, by which he was enabled to aſcend the throne; and his uſurpation added to the power of the crown inſtead of leſſening it.

At firſt no one could complain for having been deprived of a fief, ſeeing it was not beſtowed upon him in perpetuity: But when fiefs came to be acquired by avarice, by bad practices and corruption, they complained of being deprived by irregular means of what they had irregularly acquired; and this is the grand ſource from which all political miſery has ariſen. This gave riſe to the contentions that happened between the king and his barons, ſo memorable in our hiſtory.

The barons, from their encroaching ſpirit, endeavoured to convert a benefice into

into a property, and to make that property hereditary; which in time they accompliſhed.

And hereditary tenure was doubtleſs a prodigious acquiſition; yet the advantage was ſomething counterbalanced by the great number of impoſitions which the nature of the change brought with it. Theſe impoſitions are what, in reſpect of the lord, are called *fruits of tenure*; ſuch as *wardſhip*, *marriage*, *reliefs*, *heriots*, and other feudal caſualties and ſervices.

About the time that fiefs became hereditary, the power of the Engliſh kings was much ſupported by the great revenue which they reſerved in their own hands, and was fixed perpetual, and independent of their ſubjects.

The firſt branch of the king's ſtated revenue conſiſted in the royal demeſnes,

or

or crown lands, which were very extenſive, and comprehended, beſides a great number of manors, moſt of the chief cities of the kingdom: It was eſtabliſhed by law, that the king could alienate no part of his demeſnes, and that he himſelf, or his ſucceſſor, could at any time reſume ſuch donations; but this law was never regularly obſerved, which in time rendered the town ſomewhat more ſubſervient and dependent. William the Conqueror took a general ſurvey of all the lands of England, their extent in each diſtrict, their proprietors, tenures, value, and the quality of meadow, paſture, wood, and arable land which they contained, and the number of tenants, cottages, and ſlaves of all denominations who lived upon them. He appointed commiſſioners for that purpoſe, who entered every particular in their regiſter by verdict of juries; and, after a labour of ſix years, brought him an exact account of all the landed

landed property of the kingdom. This monument, called *Domeſday Book*, as valuable a piece of antiquity as any nation can boaſt of, is ſtill preſerved in the Exchequer. The Conqueror, out of theſe lands, reſerved a very ample revenue for the crown; and, in the general diſtribution of lands amongſt his followers, he kept poſſeſſion of no leſs than 1422 manors in different parts of the kingdom, which paid him rent, either in money, corn, cattle, or the uſual produce of the land. His annual fixed income, beſides eſcheats, fines, reliefs, and other caſual profits to a great value, is computed to amount to 400,000 *l.* a year, which is equal to nine or ten millions.

Richard I. in order to raiſe money for his expedition to the Holy Land, ſold the revenues and manors of the crown, the offices of greateſt truſt and power, and the vaſſalage of Scotland, for 10,000 merks

merks, together with the fortreſſes of Roxborough and Berwick; and declared that he would ſell London itſelf, if he could find a purchaſer. *Brecknock* ſays, the ordinary ſupplies of the ſtate were anciently furniſhed out of the revenues ariſing from the royal manors or baronies, 1500 in number. If this fund was not ſufficient, the king demanded an aid from the other barons, or lords of Engliſh manors. Theſe manors or baronies were about 8500 in number; and if this ſecond fund did not anſwer the grand emergency of the ſtate, a demand was made upon the other tenants *in capite*, then commonly called knights, but now freeholders; and the ſame demand was made upon our houſeholders of our walled towns, now called boroughs. But our kings, ſays he, have frittered away the crown lands; and the ſtate, by that means, became deprived of its firſt and ordinary funds, and the landed ſubjects became richer by the crown

lands

lands being thus portioned out amongſt them. The proper unalienable patrimony of the crown would this day yield an annual rent of above three millions; a ſufficient ſum to anſwer the common exigencies of government. Let the crown lands be re-aſſumed, and let the crown and royal authority be eſtabliſhed upon a firm and conſtitutional foundation, a foundation which no faction would be able to ſhake, and without which the royal authority will be an empty, inſignificant, unmeaning nothing. I am entirely of this gentleman's opinion; the re-aſſumption of the crown lands would be the happieſt thing this nation ever ſaw; and certainly would anſwer much better than Mrs. Macaulay's rotation ſcheme; which, next to this, comes neareſt of any thing yet propoſed to cut the very roots of venality and corruption, render the crown independent, and eſtabliſh it firm upon its old conſtitutional foundation, and effectually

free the ſubjects from the intolerable taxes and oppreſſions under which they now labour. But how can the king re-aſſume the crown lands without being guilty of manifeſt injuſtice, ſeeing Edward I. ſold them? There are acts of parliament indeed declaring that no king of England can alienate the crown lands; theſe laws, I ſuppoſe, *Brecknock* thinks ſtill in force.

The rent of the crown lands, conſidered merely as ſo much riches, was a ſource of power. The influence of the king over his tenants and the inhabitants of his towns increaſed his power; but the other numerous branches of his revenue, beſides ſupplying his treaſury, gave, by their very nature, a great latitude to their power, and were a ſupport of the prerogative. The king was ſeldom content with the ſtated rents, but levied heavy tailliages, at pleaſure, on the inhabitants both of town and country. There were ſome

ſettled dues or cuſtoms paid upon goods exported and imported.

All bargains of ſale, in order to prevent theft, being prohibited by Edmond, who ordained that nobody ſhould ſell or buy any thing above twenty pence value without having the bargain of ſale executed before witneſſes, and the bargain ſtruck in boroughs and public markets: the king exacted toll on all goods that were there ſold.

The king ſeized two hogſheads, one before and one behind the maſt, from every veſſel that imported wine. All goods paid to his cuſtoms a proportional part of their value.

Paſſage over bridges and on rivers was loaded with tolls at pleaſure. And though the boroughs, by degrees, bought the liberty of farming theſe impoſitions, yet

the revenue profited by theſe bargains. New ſums were often exacted for the renewal and confirmation of the privileges.

William the Conqueror granted, towards the end of his reign, that the barons ſhould be obliged to pay nothing beyond their ſtated ſervices, except a reaſonable aid of money for ranſoming the king's perſon, in caſe he ſhould be taken priſoner in war; another aid or tailliage when the king's eldeſt ſon was made a knight, and when his eldeſt daughter was married. But he reſerved a power of taxing the tenants.

The king could require in war the perſonal attendance of his vaſſals; that is, of all the landed proprietors; and if they declined the ſervice they were obliged to pay him a compoſition in money, which was called a *ſcutage*, or equivalent for the

the tenant's failure to perform the military ſervice. The ſum was, during ſome reigns, very precarious and uncertain; and was ſometimes levied without allowing the vaſſal the liberty of perſonal ſervice. It was an uſual artifice of the king to pretend an expedition, that he might be intitled to levy the ſcutage from his military tenants.

DANEGELT was another ſpecies of land tax, levied by the early Norman kings, arbitrary, and contrary to the laws of the *Conqueror*.

MONEYAGE was alſo a general land tax of the ſame nature, levied by the two firſt Norman kings, and aboliſhed by the charter of Henry I. It was a ſhilling paid every three years by each *hearth*, to induce the king not to uſe his prerogative of debaſing the coin.

The taxes in the reigns of ſome of the Saxon and firſt Norman kings were ſometimes ſo very heavy, that in the reign of William Rufus the farmers, on account of the taxes, abandoned tillage, and a famine enſued.

The ESCHEATS were a great branch both of power and revenue to the king, eſpecially during the firſt reigns after the conqueſt. In default of deſcendants from the firſt baron, his lands reverted to the crown, and continually augmented the king's poſſeſſions. But beſides Eſcheats from default of heirs, thoſe which enſued from crimes and breach of duty towards the ſuperior lord, were very frequent in ancient times. If the vaſſal, being thrice ſummoned to attend his ſuperior's court, to take up his lands and to do fealty, neglected to come, or refuſed obedience, he forfeited all title to his lands. If he denied

denied his tenure, or refuſed his ſervice, he was expoſed to the ſame penalty. Where he ſold his eſtate without licence from his lord, or if he ſold it upon any other tenure or title than that by which he himſelf held it, he loſt all right to it. The adhering to his lord's enemy, deſerting him in war, betraying his counſels and ſecrets, debauching his wife or his nearer relations, or even uſing indecent liberties with them, might be puniſhed by forfeitures. The higher crimes, rapes, robbery, murder, burning houſes, &c. were called felony, and, being interpreted want of fidelity to his lord, made him loſe his fief. The great baron was liable to the ſame forfeitures to the king as the baron's vaſſal was to the baron. And even where the felon was vaſſal to a baron, though his immediate lord enjoyed the forfeiture, the king might retain poſſeſſion of the eſtate during a year; and had the right of

ſpoiling and deſtroying it, unleſs the baron paid him a reaſonable compoſition.

HERIOTS upon the death of a tenant, and RELIEFS upon the entrance of a new one, were a ſource of great riches to the crown. When a baron died, the king immediately took poſſeſſion of the eſtate, and the heir, before he recovered his right, was obliged to make application to the crown, to deſire that he might be admitted to do homage for his land, and to pay a compoſition to the king, called a *Heriot*, which was at firſt arbitrary. If the heir was a minor, the king retained the whole profit of the eſtate till his majority, and might grant what ſum he thought proper for the education and maintenance of the young baron. This practice was founded on the notion of a fief being a benefice or fee, and that, while the heir could not perform his military ſervice, the revenue devolved on the ſuperior, who employed another

another in his place. When the king granted the wardſhip of a rich heir to any one, he had the opportunity of enriching a favourite or a miniſter; if he ſold it, he was thereby able to levy a conſiderable ſum of money. If the heir was a female, the king was intitled to offer her any huſband of her rank he thought proper; if ſhe refuſed him, ſhe forfeited her land. Even a male heir could not marry without the royal conſent; and it was uſual for men to pay large ſums for the liberty of making their own choice in marriage. When the heir or ſucceſſor was of age, he paid *relief*, which, in feudal latin, is called *relevium*, *relevamentum*, *relevatio*, becauſe by it he took up again the fees or lands which were fallen by the death or forfeiture of the feudatory. Sometimes they were called *introitus* or *ingreſſus*, and was an honorary gift to the lord by his new vaſſal, or by the lord to his prince, for his entry on his land or fee; perhaps not much

much unlike that of our copyholder's fine.

No man could diſpoſe of his land, either by ſale or will, without the conſent of his ſuperior. The poſſeſſor was never conſidered as full proprietor; he was ſtill a kind of beneficiary, and could not oblige his ſuperior to accept of any vaſſal who was not agreeable to him. *Fines*, *amerciaments*, and *oblatas*, as they were called, were another conſiderable branch of the royal power and revenue; for none could approach the royal preſence without a preſent in his hand. Even juſtice itſelf was avowedly bought and ſold, and the king's courts, though the ſupreme judicature of the kingdom, was open to none that brought not large preſents to the king. The bribes given for the expedition, delay, ſuſpenſion, and ſometimes for the perverſion of juſtice, were immenſe. Sometimes the party litigant proffered the king a cer-

a certain portion, a half, a third, a fourth, payable out of the debts which he, as the executor of juſtice, ſhould aſſiſt him in recovering. There were alſo ſome ſettled dues upon the adminiſtration of juſtice, for the grant of certain writs and proceſſes under the great ſeal. Richard I. in order to raiſe money for his cruſade, twice ordered all the charters in the kingdom to be ſealed anew, and the parties to pay fees for renewal.

The king, as he aſſumed the entire power over trade, was to be paid for a permiſſion to exerciſe commerce or induſtry of any kind. The commerce of the kingdom was ſo much given up to the king, that he erected *gilds*, *corporations*, or *monopolies*, wherever he pleaſed; and levied ſums for their excluſive privileges. This was practiſed very much by Elizabeth, to the detriment of trade. The king's

king's protection and good offices of every ſort were bought and ſold.

Amerciaments, or fines for crimes and treſpaſſes, were another conſiderable branch of the royal revenue; moſt crimes were atoned for by money, and the fines impoſed were not limited by any rule or ſtatute.

The FOREST LAWS particularly were a great ſource of oppreſſion. The king poſſeſſed ſixty-eight foreſts, thirteen chaces, and 781 parks, in different parts of England; and, conſidering the extreme paſſion of the Engliſh for hunting, theſe were ſo many ſnares laid for the people, by which they were allured into treſpaſſes, and brought within the reach of arbitrary and rigorous laws, which the king, by his own authority, had thought proper to enact.

But,

But, of all other people in the kingdom, the Jews ſuffered moſt, for they were entirely out of the protection of the law. The kings of England did not diveſt themſelves of the privilege of taxing their ſubjects when and how they pleaſed till long after fiefs became hereditary. When the feudal ſervices were not ſufficient for the expences of government, or to carry on any expedition the king had a mind to undertake, he levied an arbitrary tax; and this right the barons had not the hardineſs to diſpute till long after the conqueſt.

The feudal ſervices were the neceſſary conſequence of the king's parting with his arbitrary diſpoſal of theſe tenures. For now that a right of inheritance was in the tenant, it ſeemed but reaſonable, and without this proviſion the feudal policy could not have obtained its end, that the prince, in theſe ſeveral ways, ſhould ſecure to himſelf the honour, ſafety,

and

and defence, which the very name of the conſtitution implied and intended.

Hence hereditary feuds were of neceſſity clogged with the obligations I have mentioned; which, though trifling in compariſon with the diſadvantages of a precarious tenure, were yet at leaſt ſome check on the independency acquired. However, theſe ſervices, which were due to the king under the new model, were alſo due to the tenant in chief from thoſe who held of him by the like tenure. And ſo the barons, or great proprietors of lands, conſidering more the ſubjection of their own vaſſals than that by which themſelves were bound to their ſovereign, reckoned theſe burthens as nothing with reſpect to what they had gained by hereditary ſucceſſion. The clergy held their lands in *Franc-Almoign*, for certain ſervices by the year, than which no more could be demanded. The biſhops and clergy were exempted

exempted from marching againſt the enemy, and their vaſſals were headed by one of their feudatories, choſen by the king or biſhops. When the other feudal lords obtained hereditary tenures, the ſpiritual barons or biſhops enjoyed the ſame privilege, with an additional one, of rating themſelves in all occaſional taxations.

In time, as the barons increaſed in ſtrength, they became impatient of the feudal burthens, and looked upon the taxes or tailliages which they were obliged to pay, as an intolerable grievance. At laſt they greatly diminiſhed even their number, though the kings of England ſtill enjoy many valuable privileges, of which the bold attempts and violent attacks of the headſtrong and daring barons, nor the inundations of ſeditious and rebellious people, have yet been able to deprive them.

The

The king is ſtill conſidered as the fountain of honour, and he may, as he pleaſes, confer it upon whatever perſons he thinks fit; and moreover, can reward thoſe whom he pleaſes to honour, with profitable and honourable places and preferments, of which he ſtill retains a great number in his gift. His ſole *congé d' elire* is effectual to determine the election of a biſhop; and dukedoms and earldoms entirely depend upon the breath of his mouth. Our kings gave theſe honours when they were only officiary. *Regum eſt conſtituere comites & duces*, Saxon Chron. William the Conqueror made earldoms, at leaſt to his own followers, hereditary; but ſtill the right of conferring them remained in the crown. Bracton, who lived in Henry III.'s time, ſpeaking of *comites*, who are alſo called *conſules*, ſays, "Reges ſibi tales aſſociant ad conſulendum & regendum populum dei, ordinantes eos in magna honore poteſtate

teſtate & nomine." And even the reciting part of an act of parliament acknowledges this power; "Pro eo tamen quod hujuſmodi creatio ducum ſive comitum, ad ſolum regem pertinet & non ad parliamentum." Theſe honours, which at firſt were temporary, are now not only for life, but hereditary: Moſt of the great civil offices, and all military commiſſions, are only *durante beneplacito regis*.

The king cannot only reward with honours whom he pleaſes, but he can even yet remit penalties, and pardon offences, not only in caſes of miſpriſions, treſpaſſes, contempt, &c. but alſo in the caſe of felonies, murders, and treaſons. The ſtatute 9 Edw. 4. chap. 2. ſays, "A chaſcun roy, per raiſon de ſon office, il append à faire juſtice en execution des leges; grace en granter pardons, &c." Yet the king's pardon is not now pleadable to an impeachment of the Houſe of Com-

mons. The king indeed may pardon in caſes of murder, yet the next heir may have an appeal which the king cannot bar: the perſon charged with murder, though he has been indicted and acquitted of it at the king's ſuit, yet may be tried again upon the appeal, and if in that trial he be found guilty the king cannot pardon, becauſe the penal ſatisfaction which the ſubject is to have for the death of his near relation is ſuppoſed to be an intereſt belonging to the ſubject, and it is a maxim in law, that "Non poterit rex gratiam facere cum injurio & damno aliorum. Quod autem alienum eſt, dare non poteſt per ſuam gratiam." For this reaſon the king, it is thought, cannot pardon upon an appeal for robbery, rape, or mayhim; nuiſance, or coſts due by a ſentence in the eccleſiaſtical courts. When a man has been attainted by parliament he cannot be reſtored again in blood but by act of parliament; but his iſſue, after the king's

pardon, are rendered capable of inheriting.

The crown hath ſtill, as it ever had, a right of ſummoning parliaments, and after they are met, of continuing, adjourning, or diſſolving them; and though by the preſent conſtitution the king is obliged to call a new parliament every year, yet he may allow it to ſit as ſhort time every year as he pleaſes, and may prorogue or diſſolve it as he thinks fit. King Charles I. made the greateſt ſtep towards his own ruin by parting with the right of diſſolving the parliament of 1641: If he had diſſolved the parliament and called a new one, or none at all, he might have died in his bed. But the moſt important part of the prerogative, with regard to parliaments, that now remains, is that the king has a negative againſt paſſing bills offered to be paſſed into laws; and for the exerciſe of this negative he is not

obliged to give any reaſon: and certainly if the ſupreme power had not ſuch a negative with regard to bills, it would ſoon be reduced very low indeed, and all authority would fall by degrees into the hands of the people; who are apt, like a great body of water, to be put in motion, and then to preſs upon and bear down every thing in its way. The crown has ſtill the executive power of the laws: Indeed ſome cities and corporate towns have a power by charters from kings to chuſe their own magiſtrates, who can act in many caſes for the preſervation of the peace, ſuppreſſing of riots, &c. without a freſh order from the king; but juſtices of peace, the ancient conſervators of the peace, are appointed by the crown with commiſſions during pleaſure; and the ſheriffs, who have the command of all the power of the county, or of all the civil force that can be raiſed therein, except in the juriſdictions of the towns corporate, are appointed

pointed by the great officers of ſtate. The Saxon annals, p. 49. inform us, that it is the prerogative of the king to name the dukes, earls, aldermen and ſheriffs of the counties. Aſſar, a cotemporary writer, informs us, that Alfred depoſed all the ignorant aldermen, and appointed men of more capacity in their places. But theſe officers can uſe no force but in the execution of legal proceſſes, or for the reſiſtance of any ſudden invaſion; in any other caſe no great company of men can appear in arms without a commiſſion from the crown. If any number above twelve gather together with an ill intention, the ſheriff or juſtice of peace may read the riot act, and command them to diſperſe; and if they continue aſſembled for above an hour, they are guilty of felony.

Again, no ſubject can build any caſtle or other fortreſs defenſible, or arm and equip any ſhip of war, ſo as to act with it

againſt a foreigner, or ſubject, without the king's commiſſion. The king too has the diſpoſal of the militia; and has the undoubted right of all forts and places of defence. Accordingly, Bracton ſays, "In rege qui recte regit, neceſſaria ſunt duo hæc, arma & leges, &c." And in another place he ſays, "Sunt & alii poteſtates ſub rege, qui dicuntur barones, hoc eſt, robur belli; ſunt & alii, qui dicuntur vavaſores; viri magnæ dignitatis ſunt & ſub rege milites, ad militiam exercendam electi." And Fleta, lib. 1. ſays, "Habet rex in manu ſua omnia jura quæ ad coronam & laicalem pertinent poteſtatem, & materialem gladium, qui pertinet ad regni gubernaculum." And the ſame appears from the ſtatute in the reign of Edward I. "It belongeth, ſaith that prince, to us and from us, by our royal ſigniority, to forbid force of arms, and all other force againſt our peace, at all times that we ſhall pleaſe; and to puniſh, according to the laws and uſages

uſages of the realm, all ſuch as ſhall oppoſe; and to this the lords and commons are bound to aid us, as their good lord, alwiſe when need ſhall be." The trouble and expence of defending the ſtate lay equally upon all the land; and it was uſual, for every five hides, to equip a man for the ſervice, The *trioda neceſſitas*, or the burthen of expeditions, of repairing highways, of building and ſupporting bridges, fell upon the landed property.

In times of danger the king hath a power to command any, or all the perſons of the kingdom, to attend with arms wherever he appoints, and ſtay and arreſt any ſhip to go with his navy to any part of the kingdom for the defence thereof. Yet though the king has a right to raiſe what number of men he pleaſes in time of danger, yet he cannot now keep them up for any time without the conſent of the

parliament. Some think that the coin is ſtill in the king's power to alter or adulterate it as he pleaſes; but that ſeems to be a matter of diſpute. The power of making war and peace is wholly veſted in the crown: ſo ſays lord chief juſtice Coke; ſo ſays Sir Walter Raleigh: all our laws and law-books, and the everlaſting practice confirm it.

The king and dignity of the crown are by the law, and ought always to be the practice, held in the greateſt reſpect and reverence. The king is ſerved upon the knee, and it is an honour to the beſt lord in the land to do ſo. Perſons of all ranks muſt ſtand uncovered before him, and even before his chair of ſtate. His perſon, by the law, is ſacred and inviolable; and it is high treaſon to imagine or intend his death, when this intention appears by an overt act; though in all other caſes *voluntas non reputabitur pro facto.* By the law he is irreſiſtible,

irreſiſtible, and can do no wrong, as I have already clearly proved. Judge Doderidge ſays, That a king may, by his abſolute power, commit a nobleman to priſon, *durante beneplacito ſuo*, from whence he cannot be diſcharged by bail or mainprize, nor by the common writ *de homine replegiando*; and in 3 *Car.* I. lord chief juſtice Hide, juſtice Jones, Doderidge, and Whitlock declared, by the mouth of the lord chief juſtice, their unanimous opinion, that Sir John Cobbet and others, who had been brought into the King's Bench by the warden of the fleet, and the cauſe of their commitment and detention ſhewn to be *per ſpeciale mandatum domini regis*, without aſſigning any other cauſe, ought not to be bailed, but remanded to priſon. State Trials, vol. 7. The lords ſpiritual and temporal, and the commons of England, in parliament aſſembled, A. D. 1627, 3 Car. I. by their joint petition to that merciful prince, requeſted that no freeman ſhould

be

be taken or impriſoned, or be outlawed or exiled, or in any manner be deſtroyed or diſinherited, or be put to death, without being brought to anſwer by due proceſs of law. To which the king anſwered, without any ſaving of the rights of the crown, *ſoit droit comme il eſt deſire*. And afterwards, we are informed, this bill of rights paſſed into a law. But as ſheriffs, gaolers, *&c.* often uſed oppreſſive delays, even on frivolous excuſes, which were oppreſſive to priſoners, before they could make returns to writs iſſued out for their relief, the condeſcending King Charles II. ſettled this matter, and eaſed his ſubjects of theſe oppreſſions by the great and glorious ſtatute of 31 Car. 2. the *Habeas Corpus*; wherein it is provided, in caſe of any perſon not impriſoned for treaſon or felony, eſpecially expreſſed in the warrant for his commitment, if a writ of Habeas Corpus ſhall be brought on his behalf to the ſheriff or gaoler, and due ſecurity given for paying the

the charge of bringing, and, if need be, for carrying back the priſoner, and for his not making his eſcape; that then he ſhall, within three days after the ſervice of the writ, be brought before the lord chancellor, or the king's judges of that court from whence the writ ſhall iſſue, and the true cauſe of his impriſonment ſhall to them be certified, unleſs he be committed in any place above twenty miles from the place where ſuch court or perſon is; and if he be beyond twenty miles, and not above 100 miles, then he is to be brought within twenty days at furtheſt; and if the commitment be made out of term-time, application may be made on the priſoner's behalf to the lord chancellor, lord keeper, or to any of the king's juſtices or barons, of the degree of coif; and the ſaid lord chancellor, judge, or baron, upon viewing a copy of his commitment, or upon oath made that a copy of it was denied, ſhall grant a writ of Habeas Corpus under the

the ſeal of the court where he is judge: upon which writ, directed to the gaoler, and returnable immediately before the ſaid judge, or any other judge of any of the ſaid courts, the keeper of the priſon ſhall, within the time before expreſſed, bring the priſoner before the lord chancellor, or ſome one of the judges, with the true cauſe of his detainer. And thereupon the ſaid chancellor or judge, unleſs it appears that the commitment is for a matter in which bail is not allowed by law, ſhall diſcharge the ſaid priſoner from his impriſonment, upon his recognizance, with one or more competent ſureties, for his appearance at the King's Bench the term following, or at the next aſſizes or gaol-delivery of the county, city, or place where the commitment was made; and ſhall certify the ſaid writ, with the return thereof, with the recogniſance, into the ſaid court where the appearance is to be made, provided that the priſoner hath not wilfully neglected, by the ſpace of two whole

whole terms after his impriſonment, to pray an Habeas Corpus for his enlargement; for in caſe of ſuch neglect, he ſhall not have any Habeas Corpus granted in vacation time. If any keeper ſhall neglect or refuſe to make ſuch returns, or to bring the bodies of the perſons within the time before ſpecified, or ſhall refuſe to deliver, within ſix hours after demand, to the priſoner, or any perſon applying in his behalf, a true copy of the warrant of commitment, he ſhall forfeit for the firſt offence, to the party grieved, 100 *l.* for the ſecond offence, 200 *l.* and ſhall alſo be incapable of holding his office any longer. And if any priſoner, diſcharged by virtue of this act ſhall be committed by any one, the perſon who makes the freſh commitment, or any one who knowingly aids him in it, ſhall forfeit to the party grieved 500 *l.* In caſe that the priſoner who is committed for high treaſon or felony, plainly and ſpecially expreſſed, ſhall in open court,

in

in the firſt week of term, pray to be brought to his trial, and yet ſhall not be indicted ſome time in the next term or ſeſſions of oyer and terminer, the judges, upon motion made to them in open court the laſt day of the term, are obliged to ſet him at liberty upon bail, unleſs it appears upon oath that the king's witneſſes could not be produced in the ſame term; and if he ſhall not be indicted and tried in the ſecond term, he ſhall be diſcharged from his impriſonment.

No perſon is removed from one priſon to another without a Habeas Corpus or other legal writ, except in caſe of fire, infection, or other neceſſity. If the lord chancellor, or any other judge, refuſes to grant an Habeas Corpus, upon due application, he forfeits 500 *l.* to the party aggrieved.

No ſubject of this realm ſhall be a priſoner in Scotland, or in any place beyond ſeas;

ſeas; and if he be, he may bring an action of falſe impriſonment, and obtain treble coſts, beſides damages; which laſt is not to to be leſs than 500 *l.*; and any perſon ſigning warrant for ſuch impriſonment, upon conviction, ſhall be diſabled to bear any office of truſt or profit in this kingdom, and ſhall incur a præmunire, and be incapable of any pardon from the king, his heirs and ſucceſſors. By theſe proviſions, effectual care is now taken, that no perſon ſhall be too long kept in priſon, nor ſuffer violence and hardſhips in priſon; which is, as Bracton ſays, for cuſtody, not for puniſhment: therefore no perſon is to be put in any horrible or dangerous place, or have fetters weighing more than twelve ounces. And effectually to prevent any great hardſhips or cruelties being put upon priſoners, it is enacted, 14 Edward 3. cap. 10. that the ſheriffs ſhall have the cuſtody of the gaols, and ſhall put in ſuch under-keepers for whom they will anſwer; and if a perſon

a perſon dies, being more ſtraitly kept than he ought, the gaoler is guilty of felony; and upon every perſon dying in priſon the coroner's inqueſt ſhall ſit, and determine whether foul means were uſed to bring him to his death.

What a noble advantage is it, in order to prevent an innocent perſon's life and reputation being brought into hazard, to be tried by a grand jury of his own countrymen. The bill muſt be found by the grand jury, conſiſting of twelve or more gentlemen of ſubſtance and credit, where the fact is ſuppoſed to be committed; and they are to examine witneſſes, and allow or reject the indictment as true or falſe. If the indictment is found, the party is tried by the petty jury; if it is rejected, the party cannot be tried. Inqueſt and juries, by 23 Edw. 1. cap. 9. ſhall conſiſt of ſuch as are next neighbours, moſt ſufficient and leaſt ſuſpicious; and by 23 Edw. 3. cap. 6.

juſtices

juſtices of aſſizes ſhall have commiſſions to enquire of ſheriffs, for putting into pannels jurors ſuſpect and of evil fame, and ſhall puniſh them; and by 11 Hen. 4. cap. 9. and 3 Hen. 8. cap. 12. it is enacted, that all pannels to be returned, which be not at the particular ſuit of any party, ſhall be reformed by putting to or taking out the names of thoſe impannelled by every ſheriff, by the diſcretion of the juſtices before whom the pannels ſhall be returned. Indeed, in caſes of miſdemeanors, &c. not affecting the life of the party, there is no neceſſity for an indictment to be found againſt him by a grand jury; an information may be made by an attorney general, or by ſome other perſons in the Crown Office.

Peers and peereſſes are tried by the Peers, and are condemned or acquitted by the votes of the majority. Commons, in like manner, are tried by a jury of their own rank

and country, not by aliens, outlawed or attainted, or by perſons infamous, by having ſuffered pillory, or the like. Great care is taken about jury by ſeveral ſtatutes, particularly by 13 Edw. 1. 27 Eliz. cap. 6. 23 Hen. 8. cap. 13. 4 & 5 Will. 3. cap. 9. 3 George 2. cap. 8. 4 George 2. cap. 7. in order to prevent the party accuſed from being hurt by the partiality, bias, affection, or prejudice of the jury: the law gives the party accuſed the liberty of making a challenge or exception, both to the array and to the polls. By this liberty of challenging both the array and the polls, a man is generally ſecure of an impartial or indifferent jury.

Perſons of all ranks, after having been indicted by a grand jury, are ſure of having a regular trial by a petty jury; of having the charge openly made againſt them; and in caſes of treaſon, of having a copy of the indictment five days before

the trial; ſo that they may know what they will be charged with, and be thereby the better prepared to defend themſelves againſt it. To which end alſo, by 7 William and Mary, they have counſel allowed at their own choice, with free acceſs to them; and are to keep their ſecrets, and not to be examined againſt them.

Again, no man can be forced to become an evidence againſt himſelf, by torture or by extrajudicial confeſſion. Alfred put one of his judges to death for condemning a perſon upon a confeſſion drawn out by torture. And lord Coke ſays, "That there is no one opinion in our books or judicial records, that we have ſeen and remember, for maintenance of tortures or torments." Coke's 3d Inſt. Our law therefore has, in tenderneſs to the ſubjects, laid this method wholly aſide, except in caſes where the perſon accuſed refuſes to plead; then, indeed, he is expoſed to *paine fort et dure.*

If he will plead, he is not to be interrogated upon oath, which is a kind of torture to the conſcience. A man's voluntary confeſſion will not be allowed in ſome caſes to be an evidence againſt him; and the judge who preſides, or gives directions in a trial, is by law to be counſel with the priſoner; and when the caſe is ſummed, which is the province of the judge, the jury are to determine, *i. e.* they are to judge of the facts upon which the merits of the cauſe turn: indeed they are judges of facts and law too, and the judge is their counſel, who is to anſwer their queſtions; and they have a right to aſk him as many queſtions as they pleaſe; and, by virtue of his office, he is obliged to anſwer them. No judge has a right to give a charge to a jury; and the party who is caſt has an action of damages againſt the judge for ſo doing. The great judge Littleton, in his Tenures, declares, That if a jury will take upon them the knowledge of the law upon the matter,

they

they may, which is alſo agreed to by lord Coke, in his commentary upon the Tenures. And Sir M. Hale ſays, That the jury are judges not only of fact but of law. And, indeed, it is highly probable that, by law, juries in all caſes ought to be judges of the points of law, as well as of fact; becauſe originally the perſons of the jury ſeem to have been of the nature of judges, and to have ſat upon the bench.

Peers are acquitted or condemned by a majority of their own number; but in trials of commons the jury muſt be unanimous; and to obtain that unanimous verdict, they are ſhut up in a room, without meat or drink, till they come to an agreement. This is a circumſtance of great advantage on the ſide of mercy. This form of trial was probably brought hither by our Saxon anceſtors: it certainly was before the conqueſt; for we find in Ethelred I.'s reign, a law determining the num-

ber of jurors to that of twelve. Indeed, in thoſe early days, the *ordeals*, or combat, as we ſhall ſee, was generally preferred to this method of trial, which was introduced and gradually took place of the other.

People in general labour under a miſtake about the proſecution of highwaymen, robbers, pickpockets, &c. which is done at the expence of the informer, and is the cauſe of many of theſe villains eſcaping puniſhment. The informer is bound over to proſecute the highwayman, &c. which no judge has a right to do. The perſon is indicted in the king's name, for a tranſgreſſion againſt his crown and dignity, in the perſon of the informer; and the king, not the informer, is obliged to proſecute. The town or county where the crime is committed is the proſecutor, and the informer is not obliged to attend, or give his evidence againſt the criminal, without being ſatisfied for his trouble.

Every

is far better ſecured than formerly it was among our anceſtors; for it was uſual formerly with kings, very often not only to do injuſtice themſelves, but to deny remedy in a legal way againſt ſubjects who had thus injured others. As cauſes were often thus delayed by the king, it was uſual to give him fines and preſents in money and other things for his permiſſion to try certain cauſes.

The common people ſooner enjoyed liberty here than almoſt in any other country. Even under the Saxon government, the Saxon Ceorles, *i. e.* thoſe of the lower rank of the people, who were employed in huſbandry, were ſecured, either by cuſtom or law, in their own perſons and thoſe of their wives, from injuries and affronts. There were penalties in caſe any one debauched the wife of a Ceorle, or uſed her otherwiſe uncivilly. They were not impriſoned for any cauſe but that of felony

and

in a free and almoſt independent manner. Thoſe burthens incident to knights ſervice *in capite*, which were ſo heavy, as was thought, upon our anceſtors, are now entirely aboliſhed. The feudal ſervices, and particularly that of knights ſervice *in capite*, were wiſely contrived at firſt, and accommodated to the circumſtances of thoſe ages when it was introduced. The right of the crown to diſpoſe of heireſſes in marriage, and to have the wardſhip of minors, was often complained of as a great grievance to the ſubject, but is now moſt condeſcendingly given up by our gracious kings. Since the reſtoration our gentry hold their lands only in *fee ſoccage*; few of them having any thing to do with the crown, but are at liberty to marry their daughters to whom they will.

As the manner of holding our property is now thus advantageous, ſo the adminiſtration of juſtice, in caſes of any conteſt, is

is far better ſecured than formerly it was among our anceſtors; for it was uſual formerly with kings, very often not only to do injuſtice themſelves, but to deny remedy in a legal way againſt ſubjects who had thus injured others. As cauſes were often thus delayed by the king, ſo it was uſual to give him fines and preſents in money and other things for his permiſſion to try certain cauſes.

The common people ſooner enjoyed liberty here than almoſt in any other country. Even under the Saxon government, the Saxon Ceorles, *i. e.* thoſe of the lower rank of the people, who were employed in huſbandry, were ſecured, either by cuſtom or law, in their own perſons and thoſe of their wives, from injuries and affronts. There were penalties in caſe any one debauched the wife of a Ceorle, or uſed her otherwiſe uncivilly. They were not impriſoned for any cauſe but that of felony and

and breach of peace; and there was even penalties appointed for binding, beating, or inſulting them. Even the Pocillatrix, or maid ſervant, of a Ceorle was not to be debauched without puniſhment of him that did ſo: the penalty for debauching her was half as much as for debauching an earl's Pocillatrix.

The Ceorle's houſe too was his aſylum; for no breach of the peace was to be committed there. Alfred made a law that no criminal ſhould be attacked in his own houſe or lands till the injured perſons require compenſation. If a criminal flie to a temple, that ſanctuary muſt not be violated. The Ceorles were only obliged to pay a certain thing for their lands; and in time the freeman or lord could demand no more than what he had agreed for. Some of the Ceorles were *commendatitii*, or under the protection of the nobleſſe; others were bound for each other.

A Ceorle,

A Ceorle, by a law made in the reign of Athelſtan, might be as free as the greateſt Thane; nay, he might come to be a Thane himſelf, if he got wealth enough; and if the Thane increaſed proportionably, he might become an earl. If a Ceorle or huſbandman was able to purchaſe five hides of land, had a chapel, kitchen, a hall, and a bell, he was raiſed to the diſtinction of a Thane. Alfred very much encouraged trade; and the citizens of London and other principal cities were indulged in many grants and privileges. They had their huſtings or houſe of pleas; and at certain times they had burgemotes; in which their affairs were tranſacted by their own appointment: and ſome of the towns had land of the king for the maintenance of their guild. There was ſo much regard had to theſe trading towns, that if a ſlave in the Saxon times had continued a year and a day in one of them, and was received into their guild, he was thereby

thereby free. And if a merchant was ſo ſucceſsful as to paſs over the ſea twice upon his own account, he was then upon the ſame footing with a Thane, and was intitled to wear a ſword. For beſides poſſeſſing the advantages of birth, riches, civil powers, and privileges, the noblemen and gentlemen alone, till this act, were armed: a circumſtance which gave them a mighty ſuperiority in an age when nothing but a military profeſſion was honourable, and when the looſe execution of laws gave ſo much encouragement to open violence, and rendered it ſo deciſive in all diſputes and controverſies. Henry I. who uſurped his brother Robert's right, in order to ſupport his uſurpation, paſſed a charter which was calculated to remedy many of the grievous oppreſſions which had been complained of during the reign of his father and brother: He promiſed that, upon the death of any biſhop or abbot, he never would ſeize the revenues of the ſee or abbey during the vacancy;

vacancy; and that, upon the death of any earl or baron, or other military tenant, his heir ſhould be admitted to the poſſeſſion of his eſtate, on paying a juſt and lawful relief, without being expoſed to ſuch exorbitant exactions as had been required during the late reigns: He remitted the wardſhip of minors, and allowed guardians to be appointed, who ſhould be anſwerable for the truſt: He promiſed not to diſpoſe of any heireſs in marriage but by the advice of all the barons; and if any baron intended to give his daughter, ſiſter, niece, or kinſwoman, in marriage, it ſhould only be neceſſary for him to conſult the king: He granted his barons and military tenants the power of bequeathing by will their money or perſonal eſtates: He remitted the right of impoſing money-age, or of levying taxes, at pleaſure, on farms which the barons retained in their own hands; and required that the vaſſals of the barons ſhould enjoy the ſame privileges

vileges which he granted to his own barons. Yet, for all theſe apparent conceſſions, reliefs of heirs, oppreſſion of wardſhip and marriage, were perpetuated even till the age of Charles II.

King Henry endeavoured to moderate the levying purveyances, which were an obligation upon all the tenants in the king's demeſne lands to ſupply *gratis* the court with proviſions, and to furniſh carriages when the king made a progreſs into any of the counties. Theſe exactions were ſo grievous, and levied in ſo licentious a manner, that king Henry compaſſionated the miſery of the poor farmers, who, when they heard of the court's approach, deſerted their houſes. In this reign ſtealing was firſt made a capital crime; and falſe coining was ſeverely puniſhed. This king granted a charter to the Londoners, whereby they were impowered to hold the farm of Middleſex at 300*l.* a year, to elect their

their own ſheriff and juſticiary, and hold pleas of the crown, with the liberty of hunting in Middleſex and Surry: They were alſo exempted from ſcot, danegelt, trials by combat, and lodging of the king's retinue; and the privileges of their court of huſtings, wardmotes, and common halls, were confirmed.

The ſuperſtitious trial by water or deal, by duel or battle, Henry did not venture to aboliſh; and it never was aboliſhed by law in England: and I believe no judge in this kingdom can refuſe to try a cauſe in that manner, if required.

In a council which Henry held at Verneuil, which conſiſted of prelates and barons of England, as well as of Normandy, Poictou, Anjou, Maine, Touraine, and Britanny, a law was paſſed, which took place in all theſe different territories, that the goods of a vaſſal ſhall not be ſeized for the

the debt of his lord, unleſs the vaſſal be ſurety for the debt; and that the rents of vaſſals ſhall be paid to the creditors of the lord, and not to the lord himſelf. He ſo far aboliſhed the barbarous and abſurd practice of forfeiting ſhips which had been wrecked on the coaſt, that, if any creature was alive in the ſhip, the veſſel and goods were reſtored to the owners. Edward I. eſtabliſhed by law one weight and meaſure throughout his kingdom, and divided the city of London into ſeveral corporations or companies. In the famous grant of the weak, cowardly, ſlothful, licentious, and fooliſh uſurper John, called the Magna Charta, reliefs of heirs ſucceeding to a military fee were aſcertained. A minor, when he came of age, was ſuffered to enter upon his eſtate without paying any relief: He obliged himſelf not to ſell his wardſhip, nor levy unreaſonable profits upon the eſtate, to waſte or hurt the property; but was to uphold the caſtles,

caſtles, houſes, mills, parks, and ponds: And if he committed the guardianſhip of the eſtate to the ſheriff or any other, he was previouſly obliged to find ſecurity to the ſame purpoſe. No debt that a minor owed to a Jew was, during his minority, to pay intereſt. Heirs were allowed to marry whom they pleaſed; and widows were not compelled to marry, but were allowed to enter upon their dower without paying any relief. No ſcutage or aid was to be raiſed except in the three feudal caſes, (i. e. the king's captivity, knighting his eldeſt ſon, and marrying his eldeſt daughter) but by a great council of the kingdom. No man was obliged to perform more ſervices for his fee than he was bound to by his tenure; and no knight, when in the field at the king's command, was obliged to do any other ſervice of that nature. The ſame privileges and immunities, granted to the barons by John, extended from the barons to their inferior

vaſſals. The barons were not to levy aid from their vaſſals except in the three feudal caſes. No arbitrary tolls or impoſitions were impoſed upon merchants, who were allowed, with every freeman, to leave the kingdom and return at pleaſure, except in time of foreign war; then the king had, and ſtill has, a right to forbid any of his ſubjects to go abroad without his permiſſion, and to call home thoſe that are abroad. Land, and all cities and boroughs, were confirmed by this king in their ancient liberties; and no towns or individuals were obliged to make or ſupport bridges but by ancient cuſtom. The goods of every freeman were to be diſpoſed of according to his will. No officer of the crown was to levy any horſes, &c. without the conſent of the owner. The king's courts of juſtice were to be open to every one. The ſheriffs were incapacitated to hold any place of the crown. No freeman could be taken or impriſoned, or diſpoſſeſſed

diſpoſſeſſed of his free tenement and liberties, unleſs by a legal judgment of his peers, or by the law of the land. Yet we know how little regard was paid to this article of the Magna Charta by every ſucceeding king till the famous trial of Mr. Wilkes, which I hope has effectually put a ſtop to that illegal practice for the future. By that memorable charter it was decreed, that every freeman ſhall be fined in proportion to his fault, which ſhall not be ſo great as to ruin him; and no villain or ruſtic ſhall be by any fine bereaved of his carts, ploughs, and implements of huſbandry. To all theſe regulations John, as an uſurper, was forced to ſubmit. Numerous were the ſtatutes which paſſed in Edward I.'s reign touching the chief points of juriſprudence. He ſettled the juriſdiction of the ſeveral courts, and firſt eſtabliſhed the office of juſtice of peace and aboliſhed that of chief juſticiary. He divided the court of exche-

quer into four diſtinct courts, which managed each its ſeveral branch without dependence on any one magiſtrate. Entails were introduced in this reign, and a ſtatute was paſſed for that purpoſe. Edward III. in order to raiſe ſupplies for his fruitleſs expedition againſt the French, was forced to ſacrifice many of the royal prerogatives. He enacted that no Peer of the realm ſhould be arreſted or impriſoned, diſpoſſeſſed of his temporalities or lands, or put to death, but by the award of his peers in parliament. But the king was no ſooner poſſeſſed of the parliamentary ſupply, than he iſſued an edict revoking all that had been extorted from him.

In Henry VII.'s time the authority of the ſtar-chamber, which was before founded on common law and very ancient practice, was confirmed by act of parliament, and continued in uſe till Charles I. aboliſhed it. A law was paſſed in this reign that ſuits

ſhould

ſhould be given to the poor *in forma pauperis*; that is, without paying dues for the writs, or any fees to the counſel.

In the reign of Henry VIII. a law paſſed, declaring that no man, by law, could bequeath any part of his lands in prejudice of his heir. A king cannot now billet or quarter any ſoldiers or other perſons upon private houſes except with the free conſent of the owners; for, by a clauſe in an act of parliament 31 Charles II. it is declared and enacted, That no officer, civil or military, or other perſon whatſoever, ſhould from thenceforth preſume to place, quarter or billet any ſoldier or ſoldiers upon any ſubject or inhabitant of this realm, of what degree, quality or profeſſion whatſoever, without his conſent: And the quartering which is now allowed upon public houſes, victuallers, and the like, is only by virtue of a clauſe in the mutiny act, which is made every year, and expires at the end

of it; ſo that it is intirely at the will of the parliament whether this power ſhall be continued in the crown or not.

Under the influence of theſe gracious conceſſions, which our kings made from time to time to their people, trade increaſed, riches multiplied, and the power and influence of the commons gradually and inſenſibly, without any violent commotion for a time, grew greater and more formidable, till at laſt it was able to overturn both church and ſtate.

But the conteſts between the king and his barons were more furious and bloody: they have overturned great, noble, and well-eſtabliſhed monarchies, ſhed oceans of blood, and given riſe to moſt of our civil wars. The kings ſometimes wanted to revoke the grants that had been oftentimes imprudently made either by themſelves or by ſome of their predeceſſors,

and the lords or great men would not part with their poſſeſſions; then they fell to loggerheads, the nation was thrown into blood and confuſion, and often left an eaſy prey to a conquering enemy: and whether the king or grandees had the better, the nation paid the piper. If the king was victorious, the lords were obliged to ſubmit to his will in every thing. He ſent his precepts to the judges to do or tolerate whatever he pleaſed, though never ſo contrary to the eſtabliſhed cuſtoms or laws. Theſe precepts were in the nature of the reſcripts of the Roman emperors. If, on the other hand, the barons had the better, the king was forced to confirm all the grants that had been made or confirmed by the kings his predeceſſors, and whatever had been taken from his vaſſals was reſtored, ſome freſh conceſſions were made, and new privileges granted. In theſe ſtruggles many flowers of the crown were rudely torn from it; for whenever the crown was

ſhaken by the great men, ſome one or more gems always fell from it; and the king was not only ſtripped of the authority annexed to the perſon of a ſovereign, but his revenue ſuffered no ſmall diminution by the loſs of thoſe pecuniary emoluments which were due to him. At length the regal power became ſo weak, that the feudatory authority began to render itſelf independent of the regal dignity: for in the ſame proportion that the king ſunk in power, the nobility roſe towards independence.

When the king began to make grants in perpetuity, through the corruption which crept into the government, which continually obliged the kings to confer rewards, it was natural that they ſhould begin with giving the perpetuity of fiefs, rather than of counties. For to deprive themſelves of ſome acres of land was no great matter; but to renounce the right of diſpoſing of the great offices, was diveſting themſelves

of

of their very power. Thoſe who were ſeized of fiefs enjoyed great advantages; the compoſition for the injury done them was greater than that of freemen: their goods were not confiſcated for contumacy, as thoſe of a perſon of ordinary capacity; they were not obliged to ſwear in the court, &c. It was very natural for the freemen to wiſh to hold their demeſnes of the king, and become his vaſſals, and incorporate with the other lords: accordingly, they deviſed the uſage of giving their *allodium* into the hands of the king, or ſome nobleman reſpected for power and valour, and of receiving it afterwards, with the condition of feudal ſervices, as a fief. This practice very ſoon took place; for as ſoon as the *hommes libres*, or freemen, were permitted to chuſe their lord, they were willing to inliſt and ſhelter themſelves under the juriſdiction of thoſe from whoſe protection they expected impunity: therefore they choſe to hold immediately of the king, or

ſome

ſome powerful baron, who they were ſure was able to protect them; becauſe little people, in thoſe dangerous, turbulent, and diſorderly times, could not be ſafe without a great baron's protection: and we find by Dr. Brady, that almoſt all the inhabitants of boroughs had placed themſelves in the cliantſhip of ſome particular nobleman, whoſe protection they purchaſed by an annual tribute.

The declining ſtate of regal authority, the exorbitant power of the nobles, the violence of faction, the interfering of intereſts, the unſettled ſtate of property, the frequency of public commotions, and the fierce manners of the people, ſowed the ſeeds of many quarrels and contentions, and rendered the execution of the laws extremely feeble, dilatory, irregular, and partial. Almoſt every conſiderable cauſe, whether civil or criminal, was decided, not by law, but by violence: arms were appealed

to

to in defence either of innocence or the property of parties: Juſtice had ſeldom occaſion to uſe her balance; the ſword decided every conteſt. The offended baron, without having recourſe to the monarch, or acknowledging his ſuperior authority, aſſembled his own followers, and invaded the lands of his rival in a hoſtile manner. The paſſion of revenge was nouriſhed, and gradually grew by daily indulgence to be incredibly ſtrong. Mankind became habituated to blood, not only in times of war, but of peace; and from this, as well as from other cauſes, contracted an amazing ferocity of temper and manners. This ferocity, however, made it neceſſary to diſcourage the trial by combat; for as reſentment is, for obvious and wiſe reaſons, one of the ſtrongeſt paſſions in the human mind, the natural demand of this paſſion is, that the perſon who feels the injury ſhould himſelf inflict the vengeance due upon the act: the permitting this, however,

ever, would have been deſtructive to ſociety, and puniſhment in theſe barbarous times would have known no bounds, either in ſeverity or in duration. Therefore the ſword was committed to the magiſtrate: but the princes, whoſe province it was to inflict puniſhment, make laws and enforce them, poſſeſſed little power: great offenders deſpiſed their authority, and ſmaller ones ſheltered themſelves under a powerful chieftain from the reach of the law. An attempt to puniſh the crimes of a chieftain, or even of his vaſſals, often excited rebellions and civil wars. To nobles, haughty and independent, among whom the cauſes of diſcord were many and unavoidable; who were quick in diſcerning an injury, and impatient to revenge it; who eſteemed it infamous to ſubmit to an enemy, and cowardly to forgive him; who conſidered the right of puniſhing thoſe who had injured them as a privilege of their order, and a mark of independency; the ſlow

proceedings

proceedings of law were extremely unſatisfactory. The blood of their adverſaries was, in their opinion, the only thing that could waſh away any affront; where that was not ſhed, their revenge was diſappointed, their courage became ſuſpected, and a ſtain was left on their honour. That vengeance which the impotent hand of the magiſtrate could not inflict, their own could eaſily execute. Under governments ſo feeble, almoſt every man aſſumed the right of judging and redreſſing his own wrongs. The inhabitants, ſtrangers to induſtry, averſe from labour, and unacquainted with the arts of peace, ſubſiſted intirely by ſpoil and pillage; and being confederated into bodies, committed exceſſes, not only with impunity, but with honour. In Scotland, theſe rude, hardy people formed themſelves into ſepts or clans, which was even a ſtronger connection than that of feudal vaſſalageſhip, and of longer duration; for the remains of it are

yet

yet to be ſeen in that kingdom. Here, in England, there never was any ſuch thing; and in Wales, the inhabitants were hindered from running into it; becauſe they did not, as the Scots, adopt common names. For example, ſuppoſe the name of a Scottiſh chieftain was Donald, his ſon and all his deſcendants, and all that joined themſelves unto him for protection, were ſtiled Mac Donalds, or Made Donalds. In Wales, they continued the name, and not the ſurname. The diſputes and contentions among the barons were handed down from father to ſon, and rendered perpetual; for every nobleman, together with his eſtate and honours, tranſmitted ſome hereditary feud to his poſterity, who were bound in honour to adopt and proſecute it with the ſame inveterate rancour.

A great baron, in ancient times, conſidered himſelf as a kind of ſovereign within his territories, and a barony was only a ſmall

ſmall kingdom: for as the genius of the feudal government produced the ſame effects in ſmall as in great ſocieties, therefore the territory of a baron was in miniature the model of a kingdom. The caſe was the ſame with the barons in their courts, as with the king in the ſupreme court of the nation: their vaſſals were bound to pay ſuit and ſervice at the court of the barons; and they were peers and companions to each other, and to the baron; as the barons were to one another, and to the king, at the ſupreme court of the nation.

The great chieftain lived in the midſt of his vaſſals in his fortified caſtle, and was in a condition to protect, cheriſh, and defend them from thoſe great vaſſals, whoſe property was ſo extenſive, and power ſo great, as could not fail to render them extremely turbulent and formidable. Nor did they want inſtruments for executing their boldeſt deſigns:

deſigns: that portion of their lands which they parcelled out among their followers ſupplied them with a numerous band of faithful and determined vaſſals, which they made uſe of to enable them to withdraw their obedience; and the lands which they retained in their own hands enabled them to live with a princely ſplendor. The great hall of an ambitious baron was often more crouded than the court of his ſovereign. The ſtrong caſtles in which they reſided, afforded a ſecure retreat to the diſcontented and ſeditious. A great part of their revenue was ſpent upon multitudes of independent, but bold retainers. Impatient of ſubordination, and forgetting their proper ranks, ſuch potent and haughty barons became the rivals, rather than the ſubjects, of their prince; and being no longer willing to obey, they deſpiſed his orders, inſulted his perſon, and often wreſted from him his crown. The baron, if renowned for valour and mighty in poſſeſſions, was attended

attended with courtiers, dependants, and a numerous train of followers, more zealouſly attached to him than the miniſters of ſtate and great officers commonly were to their ſovereign. He often maintained in his court a parade of royalty, by eſtabliſhing a juſticiary, conſtable, marſhal, chamberlain, and chancellor; and aſſigning to each of theſe offices a ſeparate province and command. He was uſually very aſſiduous in exerciſing his juriſdiction, and copied his ſovereign in every thing. His hoſpitality invited numbers of his vaſſals to live and enjoy ſociety in his hall; and they had no way of gratifying their ambition, but by making a figure in his train; they felt every moment the neceſſity of his protection, and had no other means of ſecurity againſt the injuries to which they were expoſed, but by cloſely adhering to their chieftain, and falling into a ſubmiſſive dependence upon him. The low and languiſhing ſtate of commerce kept the inha-

bitants of the towns and boroughs, which were ſituated either within the demeſnes of the king or the lands of ſome great baron, poor and contemptible, and in ſuch dependence, that they in fact lived almoſt intirely ſubject to the abſolute will of their maſter.

It appears from Domeſday-book, that the boroughs were, at the time of the conqueſt, ſcarce more than country villages; and that the inhabitants lived intirely dependent on the king or great lords, and were then of a ſtation little better than ſervile. They were not ſo much as incorporated; they formed no community, were not regarded as a body politic, and being really nothing but a number of low, dependent tradeſmen, living without a particular civil tie in neighbourhood together, were incapable of being repreſented in the ſtates of the kingdom. The famous charter, as it is called, of the Conqueror, to the

the city of London, though granted at a time when he aſſumed the appearance of gentleneſs and lenity, is nothing but a letter of protection, and a declaration that the citizens ſhall not be treated as ſlaves.

The barons and gentry lived in a ruſtic plenty and hoſpitality, gave no encouragement to the arts, and had no demand for any of the more elaborate produce of manufactures. If any merchant or manufacturer roſe by induſtry and frugality to a degree of opulence, he found himſelf the more expoſed to injuries, from the envy and avidity of the military nobles; and the political inſtitutions were calculated to ſupport theſe oppreſſions, and render poverty and ſlavery perpetual. But time brought about ſeveral changes which affected the political conſtitution. Stephen the uſurper, to ſtrengthen his intereſt againſt Maud the rightful heir, paſſed a charter, in which he made liberal promiſes to all orders of men. He remitted the tax of Danegelt, and re-

ſtored the laws of king Edward. The clergy could ſcarce at this time be deemed ſubjects to the crown, for they annexed to their oath of allegiance this condition, that they were only bound as long as the king defended the eccleſiaſtical liberties, and ſupported the diſcipline of the church. The barons, in return for their ſubmiſſion, exacted terms ſtill more deſtructive of public peace, as well as of royal authority. Many of them required the right of fortifying their caſtles, and putting themſelves in a poſture of defence; and the king himſelf, totally unable to refuſe his conſent to this exorbitant demand, and as he had uſurped the throne without the pretence of a title, was neceſſitated to tolerate in others the ſame violence to which himſelf had been beholden for his ſovereignty.

In every rebellion ſome one or more gems fell from the crown: for in the ſame proportion that the king declined in power, the

the nobles roſe to independence, till at length the feudal authority began to render itſelf independent of the regal dignity; and tho' Stephen was not of a diſpoſition to ſubmit to the uſurpation of the nobles upon the royal authority, yet, being an uſurper himſelf, he was forced to give part and keep part. He allowed the chieftains to build and fortify caſtles, which was the moſt fatal conceſſion that ever was made by any king in England, whether uſurper or rightful ſovereign. All England was immediately filled with theſe fortreſſes, which the noblemen garriſoned, either with their vaſſals, or with licentious ſoldiers, who flocked to them from all quarters. Unbounded rapine was exerciſed upon the people for the maintenance of theſe troops, and private animoſities, which had with much difficulty been reſtrained by law, now breaking out without controul, rendered England a ſcene of uninterrupted violence and devaſtation. Wars between the nobles

were carried on with the utmoſt fury in every quarter: they were bad before, but now they became horrid and paſt deſcription. The nobles exerciſed hoſtilities upon each other with the moſt implacable revenge, and whole tracts of country were laid in aſhes. The caſtles of the nobility were become receptacles of licenſed robbers, who, ſallying out day and night, pillaged country towns and villages, and put the miſerable wretches who fell into their hands to torture, in order to make them diſcover their treaſures; which when they had got, they ſet fire to the houſes, and carried the inhabitants away captive: and the looſe government which prevailed at that time, and the many private wars carried on among the neighbouring nobles, and the impoſſibility to enforce any general execution of laws, had encouraged a tribe of banditti every where to diſturb the public peace, infeſt the neighbourhoods, pillage the open country, and to brave all the efforts of the

civil

civil magiſtrate, and even the excommunications of the church which were thundered out againſt them. Troops of them were often inliſted in the ſervice of one baron againſt another, and ſometimes they acted in an independent manner under leaders of their own. Theſe deſperate ruffians, called by the name *Brabancons*, *Rocitiers*, or *Cottercaux*, committed ſuch terrible devaſtations, and kept up a continual inteſtine war ſo pernicious to induſtry and the execution of juſtice, that the peaceable and induſtrious inhabitants, reduced to poverty by their ravages, were very frequently obliged for ſubſiſtence to betake themſelves to a like diſorderly courſe of life: and it was the cuſtom in London for great numbers, to the amount of an hundred or more, of the ſons and relations of eminent citizens, to form themſelves into a licentious confederacy, and to break into rich houſes and to plunder them, to rob and murder the paſſengers, and to commit with impunity all ſorts of diſorders.

The barons carried their uſurpations upon the royal prerogative to ſuch an enormous pitch during Stephen's uſurpation, that they even aſſumed the right of coining money, and of exerciſing, without appeal, every act of judicature. The inferior gentry, as well as the people, finding no defence in the law, *nam inter arma ſilent leges*, during the total diſſolution of ſovereign authority, were obliged to pay court to ſome neighbouring chieftain, and to purchaſe his protection, both by paying him an annual tribute, and by aſſiſting him in rapine upon others. The ariſtocratical power, which was ſo tyrannical and oppreſſive in the feudal government, had now riſen to its utmoſt height under the reign of this prince; and the royal power and prerogative became ſo weak, that the feudal authority became nearly independent of the regal authority. For the barons were accuſtomed, nay intitled, to make war, without the king's permiſſion, on each other: they even thought

thought themſelves intitled, if they conceived themſelves to be injured, to turn their arms againſt their ſovereign.

The quality of patron naturally united itſelf to that of ſuperior; and theſe two principles of authority mutually ſupported each other: but when, by the various diviſions and mixtures of property, a man's ſuperior came to live at a diſtance from him, or was not able to protect him from the oppreſſions of a more powerful baron, the tie became more fictitious than real. The barbarity and ferocity which increaſed with their power, forced the vaſſal to form new connections, from neighbourhood or other cauſes, and to ſeek protection by voluntary ſervice and attachment. The appearance of valour, ſpirit, and ability, in any great man, extended his intereſt very far; and if the ſovereign was deficient in theſe qualities, he was expoſed to the attacks of a hardy chieftain.

This

This was one reaſon which induced the freemen to change their *allodium* into a fief, commonly called a *fief* of *reſumption*, and differed little from a *benefice*. This practice became almoſt univerſal in France under Charles the Bald, A. D. 847. The other reaſon was to protect them from the power of the counts, who led the freemen againſt the enemy as the lords did their vaſſals; by which means the ſeveral orders of the ſtate balanced each other: yet the balance was not ſo equally kept up as to free the king's leſſer barons from being overawed by the count, who was at the head of all the freemen of the kingdom; for though the freemen were, in proceſs of time, permitted to vow fealty for a fief, and thereby became vaſſals to the king, yet the count's militia was not thereby weakened; the freeman was ſtill obliged to contribute for his *allodium*, and to get people ready for the ſervice of it at the proportion of one man to four manors, or elſe

elſe to procure a man that would ſerve the fief in his ſtead. But, in proceſs of time, as the count's power became oppreſſive, and the great baron's cruelties intolerable, the freemen or allodial proprietors haſtened to ſeek that protection which they found ſo neceſſary. For the poſſeſſors of a feudal territory, united by a regular ſubordination under one chieftain, and by the mutual attachments of the vaſſals, had the ſame advantage over the proprietors of the other, which a diſciplined army enjoys over a diſperſed multitude, (which the freemen were, except when collected together by the count) and were enabled to commit with impunity all injuries on their defenceleſs neighbours: therefore each allodial proprietor reſigned his poſſeſſions into the hands of the king, or of ſome nobleman reſpected for power and valour, and received them back with the condition of feudal ſervice; which, though a burden ſomewhat grievous, brought him ample compenſation

compenſation by connecting him with the neighbouring proprietors, and placing him under the guardianſhip of a potent chieftain, and freeing him from the oppreſſion of, and attendance upon, his own count; for they inſenſibly withdrew themſelves, as it were, from the civil juriſdiction, and entered under the feudal power of the king, and of the lord whom they thought fit to chuſe. Thus thoſe that formerly were only under the king's power, as freemen under the count, inſenſibly became vaſſals one to another, ſince every one might chuſe whom he pleaſed for his lord, the king, or any of the nobility. Thus a barony was commonly compoſed of ſeveral knights fees, and, though the number was very uncertain, ſeldom conſiſted of leſs than forty hides of land.

The ſame changes happened in fiefs as in allodia. Thoſe who received a benefice from the king, gave a part of this benefice

to

to different bondmen; but theſe parts were not diſtinct from the whole, and the king revoked them when he revoked the whole; and at the death of the king's vaſſal the rear vaſſal loſt alſo his rear fief, and a new beneficiary ſucceeded, who likewiſe eſtabliſhed new rear vaſſals; thus it was the perſon, and not the rear fief, that depended on the fief. On the other hand, the rear vaſſal returned to the king, becauſe he was not for ever tied to the vaſſal; and the rear fief returned alſo to the king, becauſe it was the fief itſelf, and not the dependence of it.

Such was the rear vaſſalage while the fiefs were during pleaſure, and ſo it was when they were for life; but an alteration was made when they became hereditary. That which was held before immediately of the king, was held now mediately, and the regal power was thrown back ſeveral degrees.

degrees. And we find, that though the king's vaſſals might give away in fief, that is, in rear fief to the king, yet thoſe rear vaſſals could not give in fief; for what they gave they might always reſume, becauſe a grant of this kind did not deſcend to the children like fiefs. From hence it followed, that the greateſt part of the lords who held immediately of the crown, now held only mediately.

In proceſs of time the counts got grants of the counties which they poſſeſſed by inheritance, and thoſe counts who formerly adminiſtered juſtice in the king's *placita*, and led the freemen againſt the enemy, found themſelves ſituated between the king and his freemen, and the king's power was removed farther off.

The counts had benefices annexed to their counties, and vaſſals under them. So that there were three ſorts of vaſſals;

thoſe belonging to the feudal lords, thoſe to the biſhops, and the third ſort to the counts, and all theſe three were vaſſals to the king.

When the counties became hereditary, the count's vaſſals were no longer the immediate vaſſals of the king; and the benefices annexed to the counties were no longer the king's benefices. The counts grew powerful, becauſe the vaſſals they had already under them enabled them to procure others, and monarchy was thereby miſerably weakened.

The inheritance of fiefs, and the general eſtabliſhment of rear fiefs, extinguiſhed the Political, and formed the Feudal Government. Inſtead of that prodigious multitude of vaſſals who were formerly under the king, there were now only few, on whom the reſt depended. The king had ſcarce any longer the direct authority; a power

a power which was to paſs through ſo many and ſo great hands, either ſtopt or was loſt before it reached its term. Thoſe great barons would no longer obey; and the king, deprived of his demeſnes, was not only expoſed to the fury of his own ſubjects, but the Normans, taking advantage of theſe diviſions, ravaged the kingdom. They came in a kind of boats or ſmall veſſels, entered the mouths of the rivers, and laid the country waſte on both ſides.

From the perpetuity of fiefs it followed, that the right of ſeniority, or *primo-geniture*, was eſtabliſhed; and the reaſon of the feudal law forced that of the political or civil law: and, as the rear fiefs deſcended to the children of the poſſeſſor, the lords loſt the liberty of diſpoſing of them, as the king did that of the real fiefs. In order to indemnify themſelves on that account, they eſtabliſhed what they called the right

right of redemption, as the king did his feudal ſervices. Redemption was firſt paid in the direct line, and by uſage came afterwards to be paid only in the collateral line.

Rear fiefs were ſoon rendered transferable to ſtrangers as a patrimonial eſtate; which gave right to the fines of alienation. Theſe rights were arbitrary in the beginning; but when the practice of granting theſe permiſſions was become general, they were fixed in every diſtrict. The king put the example by fixing his feudal ſervices.

The right of redemption was to be paid at each change of heir, and at firſt was paid even in a direct line. The moſt general cuſtom had fixed it to one year's income. This was however burthenſome and inconvenient to the vaſſal, and in ſome meaſure affected the fief itſelf; it

was therefore often agreed in the act of homage, that the lord ſhould no longer demand more than a certain ſum of money for the redemption, which, by the changes incident to money, became afterwards of no manner of importance.

When the fiefs were either precarious or for life, they ſeldom had a relation to any other than the political law; for which reaſon, in the civil laws of thoſe times there is very little mention made of the laws of fiefs; but when they became hereditary, when there was a power of giving, ſelling, and bequeathing them, they then had a relation both to the political and civil laws. The fief, conſidered as an obligation to the military ſervice, depended on the political law; conſidered as a kind of commercial property, it depended on the civil law. This gave riſe to the civil laws concerning fiefs. When the fiefs became hereditary, the laws

relating to the order of ſucceſſions muſt have been relative to the law of the perpetuity of fiefs.

The whole military force of the kingdom was ultimately in the hands of the king before the Saxon invaſion; and as the Saxons expelled, or intirely deſtroyed, the ancient Britons, and planted themſelves in this iſland on the ſame footing with their anceſtors in Germany, where the feudal laws were in full force; ſo the military power ſtill remained in the king, who could, at his pleaſure, command the attendance of the barons and their vaſſals, the counts and their freemen, and the biſhops and their vaſſals, and could employ them, during forty days, either in reſiſting a ſovereign enemy, or reducing his rebellious ſubjects.

A ſtanding army was then unknown to the conſtitution; becauſe every lord of a

whole manor was obliged to furniſh thirteen ſoldiers, or any part of that number, when required. Every ſubject ſeized of a knight's fee, which at that time might be eſteemed at 50 *l. per annum*, was obliged, as I before obſerved, to attend the army in perſon, or find a ſubſtitute to ſerve in his ſtead. By this comprehenſive and equitable plan of government, the kings of England could always in a few months bring an army into the field of 15,000 men, without levying one penny burthen upon their landed ſubjects. As the ſubjects who held the whole lands, held it *per ſervitium gladii*, the charge and defence of it then properly belonged to them, and to them only; and the chief, if not the ſole, buſineſs of parliament was about the defence of the nation. It was the peculiar province of the aldermen of the ſeveral cities and boroughs, to maintain, in times of peace and war, their reſpective walled towns. For this reaſon they were early ſummoned

ſummoned to the common council of the kingdom. The aldermen of the ſea-ports were to defend their reſpective ports and harbours; and for this reaſon they had annual ſummons to parliament. The lords of manors, and all the other leſſer freeholders, were to defend the whole kingdom, wherever and whenever required.

Henry II. after he had demoliſhed all the fortified caſtles of the barons, fixed an aſſize of farms, by which all his ſubjects were obliged to put themſelves in a ſituation proper for defending themſelves and the realm; every man poſſeſſed of a knight's fee was ordained to have for each fee a coat of mail, a helmet, a ſhield, and a lance; every freeman poſſeſſed of goods to the value of 16 merks was to be armed in like manner; every one poſſeſſed of ten merks was obliged to have an iron gorget, a cap of iron, and a lance; all burgeſſes were to have a cap of iron and a lance, and

a wambeis; that is, a coat twilted with wool, tow, or other ſuch materials.

The counts aſſembled the freemen, and headed them againſt the enemy: and as all the freemen were divided into hundreds, which formed what was called a borough; ſo the counts had their officers, who were called Centinarii, who commanded under the count, and led the freemen of the boroughs or hundreds to the field. As the counts carried the freemen againſt the enemy, the feudal lords carried alſo their vaſſals and rear vaſſals; and the biſhops, abbots, or their *advocati*, (advocates) carried theirs: but the clergy having a privilege to ſtay at home, deputed one of their feudatories to head their vaſſals againſt the enemy. This army, however, compoſed of feudal vaſſals, was commonly very untractable and undiſciplined; and though it was very burthenſome to the ſubject, yet rendered very little ſervice to the ſovereign;

both

both becauſe of the independent ſpirit of the perſons who ſerved in it, and becauſe the rank and commands in the army were not given, either by the choice of the ſovereign, or from the military capacity and experience of the officers, but by birth. For each baron conducted his own vaſſals, and his rank was greater or leſs, in proportion to the extent of his property: even the ſupreme command, under the king, was often attached to birth; and as the barons and military vaſſals, unacquainted with obedience, unexperienced in regular fighting, compoſed a very diſorderly body, conſequently a very feeble army; and coming late into the field, and only obliged to ſtay forty days at their own expence; (though, if the expedition was diſtant, they were put to great expence) the prince reaped very little benefit from their attendance; and ſometimes they proved more formidable to their prince than to the common enemy.

In the reign of Etheldred, when the Danes, under Sweyn, prodigiouſly haraſſed England by their frequent invaſions, a law was made, ordering the proprietors of eight hides of land to provide themſelves with a horſeman and a complete ſuit of armour; and thoſe of 310 hides, to equip a ſhip for the defence of the coaſt.

Henry II. an active and wiſe prince, ſenſible of theſe inconveniencies, and ſeeing that an army under ſuch military diſcipline and regulations, were very unfit to accompliſh the proſpect he entertained of freſh acquiſitions, accordingly diſuſed this cumberſome and dangerous machine, ſo apt to recoil upon the hand which held it, and introduced the practice of making a commutation of their military ſervice for a ſum of money. He was the firſt Engliſh king who impoſed a ſcutage of 3 *l.* on each knight's fee; and, with this money, he levied an army, which was more under his

command, and whoſe ſervice was more durable and conſtant. This was the firſt army that ever was in England under this model.

In Henry V.'s reign, a great alteration was made in the ſyſtem of government; the military part of the feudal ſyſtem was ſo imperfectly kept up, that it could no longer ſerve for the defence of the country. The king empowered certain commiſſioners to take a review of all the freemen in each county able to bear arms, to divide them into companies, and to keep them in readineſs to defend the country. Thus the feudal militia gave place to what we now have.

In thoſe days, the military and civil power kept pace with each other. The whole judicial power was ultimately in the king's hands; the king's edicts had the full force of a law.

It appears from the *great charter* itſelf, that not only John, a tyrannical prince and uſurper, and Richard, a violent one, but their father Henry, under whoſe reign the prevalence of groſs abuſes is leaſt to be ſuſpected, was accuſtomed, from his ſole authority, without proceſs of law, to impriſon, baniſh, and attaint the freemen of the kingdom. And king Henry VIII.'s parliament paſſed an act, impowering the king to repeal or annul, by letters patent, whatever acts of parliament had been paſſed before he was four and twenty years of age; and by a ſubſequent act, they gave to the king's proclamations the ſame force as to a ſtatute enacted by parliament: and this law is only declaratory, as we ſee by the preamble, where it is ſaid, that ſudden emergencies often occur which require ſpeedy remedies, and cannot await the ſlow aſſembling and deliberations of parliament; and that though the king was empowered, by his authority derived from God, to con-

ſult

ſult the public good on theſe occaſions, yet the oppoſition of refractory ſubjects might puſh him to extremity and violence: for theſe reaſons, the parliament, that they might remove all occaſions of doubt, aſcertained by a ſtatute this prerogative of the crown, and enabled his majeſty, with the advice of his council, to ſet forth proclamations, enjoining obedience, under whatever pains and penalties he ſhall think proper; and the proclamations were to have the force of perpetual laws. Here is authority conferred by poſitive ſtatute, which admits of no controul or limitation; though, in truth, the Engliſh conſtitution had no need for it: for the kings of England had been always accuſtomed, from their own authority, to iſſue proclamations, and to exact obedience to them. And this prerogative is certainly a ſtrong proof of abſolute power. They facilitated the execution of this law, by appointing that any nine counſellors ſhould form a legal court for

for puniſhing all diſobedience to proclamations.

The king was at firſt, as I have already proved, the ſupreme judge of his people, and in perſon heard and determined all controverſies among them; but the multiplicity of cauſes ſoon made it neceſſary to appoint judges or dukes, who, in the king's name, decided matters belonging to the royal juriſdiction. The king therefore decreed and appointed, that whoever was ſubject to the military power of another, ſhould be alſo ſubject to his civil juriſdiction. Then commenced the lords right to adminiſter juſtice in their fiefs; and, by the ſame principle, the patricians, or counts, had the right of judging in their counties. The counts in their counties were lords, and the lords in their ſeignories were counts: but they never pronounced judgment alone. In order to judge affairs, they aſſembled a kind of aſſize, where the principal

principal men aſſembled, and the lord had his peers, and the count had his centinarii, or ſheriffs.

The juriſprudence of England, during the period of the Anglo-Saxons, is nothing but an abſtract of the laws of the Germans, with ſome trifling alterations and additions.

The lords and abbots, among the Anglo-Saxons, poſſeſſed a criminal juriſdiction within their territories, and could puniſh thieves or robbers whom they caught there; and ſo it continued here for many years. And as the judicial laws in England, during the Saxon race, were the ſame as in Germany, ſo were the political laws.

In England, Alfred the Great, when he came to the throne, found that his ſubjects had ſhaken off all bonds of government; and even the feudal ſyſtem of politics,

litics, which till that time had preſerved ſome repute, was neglected and diſregarded; and nothing but diſorder, robberies and pillaging were to be ſeen in every corner of the kingdom. In order to remedy theſe great evils, and render the execution of juſtice ſtrict and regular, he divided England into counties, which he ſubdivided into hundreds, and the hundreds into decuries, or tythings, *Hors pris clers, & chivalers, & lour enfaunts & femme*; *except clercs, milites, their children and women.* He obliged every houſeholder, or ordinary freeman, to anſwer for the behaviour of his family and ſlaves, and even of his gueſts, if they were above three days in his houſe; and every ten houſeholders, or free pledges, (which formed a corporation, under the name of a tything decennary, or fribourg) were anſwerable for one another's conduct; and had a ſuperintendent over them, called a tything-man, headborough, borſholder, or capital pledge;

pledge; and every man was puniſhed as an outlaw who did not regiſter himſelf in ſome tything, from which he was not to remove without a warrant from the borſholder of the tything. And if any perſon in a decennary, or tything, was guilty of a crime, the borſholder was ſummoned to anſwer for him; and if he was not inclined to anſwer for his appearance to clear himſelf, the criminal was committed to priſon, and there detained till his trial, which is the origin of giving bail: if he fled, either before or after finding ſecurities, the borſholder became ſubject to the penalties of the law; and if thirty days elapſed before the criminal could be produced, then the borſholder, with two other members of the decennary, was obliged to appear, and, together with three chief members of the three neighbouring decennaries, to ſwear that his decennary was neither privy to the crime committed nor to the eſcape of the criminal. And when the

the borſholder could not find ſuch a number to anſwer for his innocence, the decennary was compelled by fine to make ſatisfaction to the king, according to the degree of his crime. By this inſtitution every man was anſwerable for the conduct of another, and, for his own ſafety, kept a watchful eye over him.

In the adminiſtration of juſtice the borſholder ſummoned together his whole decennary, to aſſiſt him in deciding any leſſer differences in affairs of greater importance: in appeals from the decennary, or in diſputes between the members of different decennaries, the caſe was brought before the hundred, which conſiſted in ten decennaries, or a hundred families of freemen, and which was regularly aſſembled once in four weeks for the deciding of cauſes.

This method of deciſion deſerves to be noted, as being the origin of juries, which

is

is a moſt admirable inſtitution. This court was called the *Folc-Geomot, Folc-Mote, View* or *Court* of *Franc Pledges*, and was held before the king's *Gerefe*: "I will that every *Reve* have a Gemote always about four weeks diſtance, and do that every man have a Folc right, and that each ſquabble have an end." LL. Ed. c. 11. "If any man turn away his ſervant for evil-doing, and his lord had a mind unjuſtly to undoe him, he may juſtify himſelf if he can in the Folc-Mote." LL. Athelſtan, c. 1. Twelve freeholders were choſen, who, having ſworn, together with the hundred, or preſiding magiſtrate of that diviſion, to adminiſter impartial juſtice, proceeded with the examination of the cauſe which was ſubmitted to their juriſdiction.

In trials of *novel diſſeiſin*, and for *poſſeſſion* of *lands*, *cuſtoms*, *ſervices*, *&c.* the juries at the time of the conqueſt, and in ſeveral of the kings reigns next ſucceeding,

were impannelled out of the ſame town and neighbourhood, of ſuch as did know the land and things in queſtion, and who had been poſſeſſed of it, and for what time. And to this purpoſe, in an aſſize, if none of the jurors knew the right itſelf, or truth of the matter, and did teſtify ſo much to the court upon oath, recourſe was then had to others, until ſuch were found who did know the truth; but if ſome did know the truth, and others did not, thoſe that knew it not were put by, and others called into the court, until twelve at the leaſt ſhould be found to agree therein. And for this purpoſe it was, that all ſuitors to the hundred and county court were bound to appear there under great penalties, that there might be a jury of ſuch as knew whoſe the land was. In the Longobard and Lombard laws, and the capitularies of Charles and Ludovicus, and in other old German laws, we have almoſt the ſame act of jurors; and they are there called *Teſtes:*

Teſtes: and often in Domeſday-book it is thus found, *teſtatur hundreda*, *teſte hondreda*, the hundred witneſſeth that ſuch land is ſuch a man's, or by witneſs of the hundred ſuch land is ſuch a man's. See the claims of Yorkſhire, Lincolnſhire, and Suffolk, at the end of that book.

And in as many counties and ſhires as the church of Canterbury had lands of which it had been diſſeized, the ſuitors to the county court where ſuch lands lay were, by their ſeveral ſheriffs, ſummoned to appear at Pikenden Heath near Ayleſford, to give teſtimony whether the lands which *Lanfranc* claimed in their counties, belonged to the archbiſhopric, or to Odo earl of Kent.

But, beſides theſe monthly meetings of the hundred, there was an annual meeting, deſigned for a more general inſpection of the police of the diſtrict, the inquiry into

crimes, the correction of abuſes in magiſtrates, and the obliging every perſon to ſhew the place in which he was regiſtered. The people, in imitation of their anceſtors the ancient Germans, aſſembled there in arms, where a hundred was ſometimes called a wapentake; and its court ſerved both for the ſupport of military diſcipline and for the adminiſtration of civil juſtice.

The next ſuperior court to that of the hundred, or court of barony, was the county court, or *ſhire-mote*, which met twice a year, after Michaelmas and Eaſter.

This court was to judge between the ſubjects of different baronies, and to receive appeals from the hundreds and decennaries. Here the biſhop and alderman, or earl, preſided. In this court the moſt remarkable tranſactions were finiſhed; and in order to preſerve a memorial of them, they were inſerted in the black leaves of the pariſh Bible.

Cauſes

Cauſes were determined without much pleading, formality, or delay, by a majority of votes; and every freeholder of the county poſſeſſed an equal vote. Formerly the alderman or earl poſſeſſed the civil and military authority; but Alfred, ſenſible that this coalition of powers rendered the nobility dangerous and independent, appointed alſo a ſheriff in each county, who enjoyed a co-ordinate authority with the former in the judicial function. This office alſo empowered him to guard the rights of the crown in the county, and to levy the fines impoſed; which in that age formed no contemptible part of the public revenue. The alderman had a third of the fines, and the king had two thirds. Here all the freeholders of the county, even the greateſt barons, were obliged to attend the ſheriff in theſe courts, and to aſſiſt him in the adminiſtration of juſtice. By this means they received frequent and ſenſible admonitions of their dependence on the king or

ſupreme magiſtrate; they formed a kind of community with their fellow barons and freeholders. They were often drawn from their individual and independent ſtate, peculiar to the feudal ſyſtem, and were members of a political body. The barons were never able to free themſelves from their attendance on the ſheriffs and itinerant juſtices, till the reign of Henry III.

The wiſe and vigilant Henry II. was the firſt king who divided England into four parts, and appointed itinerant juſtices, who were either prelates or conſiderable nobility, to go the circuit in each diviſion, and adminiſter juſtice in the counties; and in order to remove all obſtacles to the execution of juſtice, and again reſtore authority to the laws, he was very aſſiduous in cauſing all the new erected caſtles to be demoliſhed, which had proved ſo many ſanctuaries to freebooters, robbers, and murderers. He was vigorous in the execution

cution of juſtice, and in the ſuppreſſion of robbery and violence; and, like a true father of his country, he ſhewed himſelf fully reſolved to reform all the abuſes and diſorders that had got into the kingdom during the ſucceſsful uſurpation of his predeceſſor; and, in a ſhort time, by his vigilance and wiſe policy, reſtored tranquillity to England. The itinerant judges which Henry appointed, were *counts*, *miſſi dominici*, or *commiſſaries*. They held their placita, or aſſizes, for trying cauſes. The count held his placita eight months in the year, and the miſſus dominicus four. They had a power of condemning to death, of judging of liberty, and of the reſtoration of goods. The centinarii and ſheriffs were their officers, and ſat under them in their courts, and gave judgment in leſſer matters. If the counts or commiſſaries did not find themſelves able to bring the great lords, who ſtill continued their courts, to reaſon, they obliged them to give bail for

ſecurity for their appearance in the king's court; but if they did not ſubmit to the judgment of the ſheriffs or the counts, and did not make complaint, they were impriſoned till they made ſubmiſſion; but if they complained, they were conducted under a proper guard before the king, and the affair was examined in his court.

The adminiſtration of juſtice in particular by the courts of decennary, the hundred, and the county, were well calculated to reſtrain the exorbitant power of the nobles. There lay an appeal in default of juſtice from all theſe courts to the king himſelf, the ſupreme judge and fountain of all law and juſtice, by whoſe authority and appointment the other inferior courts were inſtituted. Britton, in the perſon of king Edward I. by whoſe order he wrote his book, ſays, "En primes, en droit nous meſmes & de noſtre court, avons iſſint ordyne, que pur ceo, que nous ne ſuffiſons

mye en *nòtre proprie perſone* à oyer & terminer toutes quereles del people avaunt dit, avons partie noſtre charge ex pleuſieurs parties ſicome icy eſt ordine." Firſt of all, in right of ourſelves and of our court, we have ſo ordained; and for that we are not ſufficient in our own proper perſon to hear and determine all plaints of our people aforeſaid, we have divided our charge into many parts as is there ordained. And then proceeds, "Noûs voluns que noſtre juriſdiction ſoit ſur toutes juriſdictions en noſtre royalme," *&c.* We will that our own juriſdiction be ſuperior to all juriſdictions of our realm. So that in all felonies, treſpaſſes, contracts, and all other actions, perſonal or real, we have power to give, or cauſe to be given, ſuch judgments as they will bear, or do appear to them, without other proceſs, whereſoever we know the direct right. The king is like the ſun in the firmament, and his courts like the rays of light iſſuing out from that ſun,

The

The appealing the peers of falſe judgement was determined by a judicial combat between the appealing party and one of the lords, peers, or bailiff; but all appeals of falſe judgment were not decided by battle. When the affair was of ſmall importance, then the lord obliged the parties to withdraw their pledges of battle; if the fact was notorious, or if the court had often determined upon the like matter, the judge gave a deciſion without allowing a combat. In all caſes of appeals, however, it was the buſineſs of the ſuperior court to examine, whether it was proper to withdraw the pledges of battle, or not. There lay no appeal of falſe judgment againſt the king's court, becauſe, as there was no one equal to the king, no one could appeal him, and, ſeeing the king had no ſuperior, none could appeal from his court; therefore, when a lord was afraid that his court would be appealed of falſe judgment, or perceived that they were determined to appeal, if juſtice required

quired there ſhould be no appeal, he might petition for peers for the king's court, who could not be appealed of falſe judgement. If the lord could not have judges from the king, he might remove his court to the king's, if he held immediately of him; but if there were intermediate lords, he had recourſe to his paramount, going from one lord to another till he came to the ſovereign. And though in thoſe days they had no notion of the practice of our modern appeals, yet they had recourſe to the king, who was the ſource from whence all thoſe rivers flowed, and the ſea into which they returned. The appeal of default of juſtice aroſe from this cauſe: When an innumerable multitude of petty lordſhips were formed, and different degrees of vaſſalage eſtabliſhed, there was a great neglect in ſome vaſſals in holding their courts, as very conſiderable profits accrued to the lord paramount from the ſeveral fines; therefore,

fore, when the court of any particular lord deferred, evaded, or refuſed to do juſtice to the parties, then they might bring an appeal of default of juſtice. If the appeal lay againſt the lords, peers, or tenants, then they were tried before the paramount; and, if they were caſt, they paid a fine to the lord, who took poſſeſſion of their fief till they complied. If the default was owing to the lord, then the appeal lay againſt him before the paramount; and, if the fact was proved, he loſt his right of judging in that cauſe, which was tried in the ſuperior court; for there were many ſubordinate courts. King Alfred, the better to guide the magiſtrates in the adminiſtration of juſtice, framed a body of laws, which, though now loſt, ſerved long as the baſis of Engliſh juriſprudence, and is in general eſteemed the origin of what is called the common law.

The

The higher cauſes which directly concerned the political order of the ſtate, ſuch as diſputes between barons, biſhops, abbots, counts, and other grandees, were reſerved for the king's own determination in the *curia regis*. Of this court Bracton ſays, " Habet rex unam propriam curiam, ſicut aulam regiam, & juſticiarios capitales, qui proprias regis cauſas terminant, & aliorum omnium, per querelam, vel per privilegium, ſive libertatem; ut ſi fit aliquis implacitari debeat niſi coram ipſo domino rege." The king hath one proper court, even as his royal palace, and capital juſtices, who determine his proper cauſes, and the cauſes of others, by plaint, privilege, or liberty; as when a man ought not to be impleaded but before the king himſelf. And in another place, " Item juſticiariorum quidam ſunt capitales, generales, perpetui & majores, à latere regis reſidentes, qui omnium aliorum corrigere tenentur injurias & errores." Alſo of

juſtices

juſtices there are ſome capital, general, perpetual, and of greater note, always preſent with the king, who are bound to correct the errors and wrongs of others. Fleta, another ancient lawyer, writes thus, "Habet etiam rex curiam ſuam & juſticiarios ſuos, tam milites quàm clericos, locum ſuum tenentes in Anglia, coram quibus, & non alibi, *niſi coram ſemetipſo & concilio ſuo*, vel auditoribus ſpecialibus, falſa judicia et errores juſticiariorum evertuntur & corrigantur; ibidem etiam terminantur brevia de apellis, & alia brevia ſuper actionibus criminalibus & injuriarum contra pacem regis illatarum impetrata, & omnia in quibus continentur *ubicunque tunc fuerimus in Anglia.*" The king hath his court and juſticiaries, as well military men as clerks, his deputies in England, before whom, and no where elſe, unleſs before himſelf and his council, or ſpecial commiſſioners of *Oyer*, falſe judgement and errors of juſtices are returned and

corrected; and there are alſo determined writs of appeals, and others upon criminal actions and injuries againſt the king's peace, and all others in which are contained theſe words, *ubicunque fuerimus in Anglia*, wherever we ſhall be in England. By Bracton this is called Magna Curia; becauſe, in a writ of right, if the lord's court failed of doing right the cauſe was transferred to the county, that the ſheriff might do right, and ſo from the county to this court, if the king would it ſhould be there determined, upon certain proof of failure of right in other courts. This was the "Curia regis ordinaria ubicunque fuerit in Anglia;" but was not *magnum commune*, or *generale concilium regis*.

The king himſelf often ſat *in curia regis*, which always attended his perſon: he there heard cauſes and pronounced ſentence; and, though he was aſſiſted by the advice of other members, it is not to be imagined

imagined that a deciſion would eaſily be obtained contrary to his inclination or opinion. In his abſence the chief juſticiary preſided, and who was the firſt magiſtrate in the ſtate, and a kind of viceroy, on whom depended all the civil affairs of the kingdom. The other chief officers of the crown, the conſtable, mareſchal, ſeneſchal, chamberlain, treaſurer, and chancellor, were members, together with ſuch feudal barons as thought proper to attend; alſo the barons of the exchequer, who at firſt were alſo feudal barons, appointed by the king.

This court, which was ſometimes called the king's court, ſometimes the court of exchequer, judged in all cauſes, civil and criminal, and comprehended the whole buſineſs which is now ſhared out among four courts; the chancery, king's bench, common pleas, and exchequer. Such an accumulation of power was itſelf a great

ſource

ſource of authority, and rendered the juriſdiction of the court terrible to all ſubjects; but the turn which judicial trials took ſoon after the conqueſt ſerved ſtill more to increaſe its authority, and to augment the royal prerogative.

William the Conqueror, among other violent changes which he attempted and effected, introduced the Norman law into England, ordered all pleadings to be in that tongue, and had interwoven with Engliſh juriſprudence all the maxims and principles which the Normans, more advanced in cultivation, and naturally litigious, were accuſtomed to obſerve in the diſtribution of juſtice. Law now became a ſcience, which at firſt fell entirely into the hands of the Normans, and which, even after it was communicated to the Engliſh, required ſo much ſtudy and application, that the laity in thoſe ignorant ages were incapable of attaining it, and

it was a myſtery almoſt ſolely confined to the clergy, and chiefly to the monks. The great officers of the crown, and the feudal barons, who were military men, found themſelves unfit to penetrate into theſe obſcurities; and, though they were intitled to a ſeat in the ſupreme judicature, the buſineſs of the court was wholly managed by the chief juſticiary and the law barons, (in France, *les gens des loix*, gentlemen of the law) who were men appointed by the king, and intirely at his diſpoſal. This natural courſe of things was forwarded by the multiplicity of buſineſs which flowed into that court, and which daily augmented by the appeals from all the ſubordinate judicatures of the kingdom. In the Saxon times no appeals were received in the king's court, except upon the denial or delay of juſtice by the inferior courts; and the ſame practice was ſtill obſerved in moſt of the feudal kingdoms of Europe. But the great power of the

the Conqueror eſtabliſhed at firſt in England an authority which the monarchs in France were not able to attain till the reign of St. Lewis, who lived near two centuries after. He empowered his court to receive appeals both from the courts of barons and the county courts; and, by that means, brought the adminiſtration of juſtice alternately into the hands of the ſovereign. And, leſt the expence or trouble of a journey to court ſhould diſcourage ſuitors, and make them acquieſce in the deciſion of inferior judicatory, itinerant judges were afterwards eſtabliſhed, who made their circuits through the kingdom, and tried all cauſes that were brought before them: by this expedient the courts of barons were kept in awe, and, if they ſtill preſerved ſome influence, it was only from the apprehenſion which the vaſſals might entertain of diſobliging their ſuperior by appealing from his court. But the county courts were much diſcredited,

and, as the freeholders were found ignorant of the intricate principles and forms of the new law, the lawyers gradually brought all buſineſs before the king's judges, and abandoned the ancient, ſimple, and popular judicature. After this manner the formalities of juſtice, which, though they appeared tedious and cumberſome, were found requiſite to the ſupport of liberty in all monarchical governments, and proved, at firſt, by a combination of cauſes, very advantageous to the royal authority in England. The Conqueror aboliſhed that old cuſtom of the biſhops and ſheriffs ſitting together in judicature, and ordained, that, for the future, the biſhops and aldermen of the ſhires ſhould have ſeparate courts and ſeparate juriſdictions. The pretence for this alteration was the diſtinct nature of the two judicatures, and the deſire of maintaining a ſtrict conformity to the canons of the church. The real deſign was to deſtroy

the influence and power of the clergy with the people, and to get them more under ſubjection to the civil magiſtrate. But the clergy ſaw the drift, and they contrived methods to counteract it. They hit upon a very natural and effectual one. They all turned common lawyers, and ſo found means of introducing themſelves into the civil courts. This expedient ſucceeded ſo well, and was ſo generally reliſhed, that the clergy, to a man almoſt, in the next reign, were become profeſſors of the common law. Matters continued on this footing during the three firſt of the Norman reigns; but a new ſcene was opened under king Stephen. In this reign the Juſtinian laws, which had lately been recovered in Italy, became at once the faſhionable ſtudy over all Europe. It is certain that the *pandects* were firſt brought amongſt us in that reign, and that the reading of them was much favoured by archbiſhop Theobald, under whoſe en-

couragement they were publickly read in England by Vacarius, a ſhort time after the famous Irnerius had opened his ſchool at Bologna. There is ſomething ſingular in the readineſs with which this new ſyſtem of law was embraced in theſe weſtern parts of Europe. It was in oppoſition to Innocent II. who was for obtruding on Chriſtian ſtates the decretals as laws, manifeſtly calculated for the deſtruction of the civil magiſtrate's power. When the Juſtinian laws began to make their way, the Popes early took the alarm, and, by their decrees, forbad churchmen to teach the civil law; as appears from the conſtitution of Alexander III. ſo early as the year 1163, in the council of Tours; and afterwards from the famous decretal of *ſuper ſpecula* by Honorius III. A. D. 1219, in which the clergy of all denominations, ſeculars as well as regulars, were prohibited the ſtudy of it. And it was doubtleſs to defeat the miſchief which the popes apprehended

hended to themſelves, from the credit of the imperial laws, that Gratian was encouraged about the ſame time to compoſe and publiſh his decree, which had the expreſs approbation of pope Eugenius. To ſee now what reception this newly diſcovered law, ſo ſeverely dealt with by the pope, and ſo well entertained by the greateſt part of Europe, had in England: Vacarius had continued to teach it for ſome time in the archbiſhop's palace at Lambeth to great numbers, whom the faſhion of the age and the novelty of the ſtudy had drawn about him; the fame of the teacher was very high, and the new ſcience had made a great progreſs, when, on a ſudden, it received a ſevere check, and from a quarter from which one ſhould not naturally expect it. In ſhort, the king himſelf interdicted the ſtudy of it; ſome had imagined that this inhibition was owing to the ſpite he bore to archbiſhop Theobald; but the true reaſon ſeems to be, that the canon law was firſt read by Vacarius at

the ſame time, and under colour of the imperial. I think we may collect thus much very clearly from John of Saliſbury, who acquaints us with the edict: for he conſiders it as an offence againſt the church, and expreſsly calls the prohibition an impiety. It is true, the decretals of Gratian were not yet publiſhed; but Ivo had made a collection of them in the reign of Henry I. and we may be ſure that ſome code of this ſort would privately go about amongſt the clergy, from what was before obſerved of the pains taken by Innocent II. to propagate the decretals. We may further obſerve, that Theobald had been in high favour with Innocent, and that his ſchool at Lambeth was opened immediately on his return from Rome, where he had been to receive his pall from this pope on his appointment to the See of Canterbury. All which makes it probable, that Stephen's diſpleaſure was not ſo much at the civil as the canon law, which he might well conclude had no friendly aſpect on his ſove-

reign

reign dignity. And we have great reaſon to think that this was a fact, from obſerving what afterwards happened in the reign of Henry III. when a prohibition of the ſame nature was again iſſued againſt the teachers of the Roman laws in London. The true cauſe of the royal mandate is well known; Gregory IX. had juſt then publiſhed a new code of the decretals, which, like all former collections of this ſort, was calculated to ſerve the papal intereſt, and depreſs the rights of princes. However, theſe edicts, if we ſuppoſe them levelled againſt the civil law, had no effect, any more than the popes' Alexander and Honorius before mentioned: for the imperial law being generally well received by the princes of Europe, preſently became a kind of *jus gentium*; and the clergy, who aſpired to power and dignity either abroad or at home, ſtudied it with an inconceivable aſſiduity; inſomuch that Roger Bacon tells us, that in his time, for forty years together, the ſeculars, who were the eccleſiaſtics

eccleſiaſtics employed in buſineſs, never publiſhed a ſingle treatiſe in divinity. All the learning of the times was in the clergy; and that learning was little more than the imperial and common laws. And to ſee the height to which this humour was carried, not the ſeculars only, who intended to riſe by them, but the very monks in their cells ſtudied nothing but theſe laws. The clergy, for that very reaſon, filled the magiſtracies and great offices of the kingdom. They had good reaſon for applying themſelves ſo cloſely to the ſcience of the law; they had not only their own immediate advantage, but they were in hopes, by bringing the imperial laws into the civil courts, and making them the ſtanding rule of public adminiſtration, to control the too princely barons, and, from their good-will to the papal authority, in due time to draw the canon laws into vogue along with the imperial. This laſt project they endeavoured to put in execution, but failed twice in their attempt. The firſt time they

they made trial of their intereſt and power, was in a parliament held under Henry III. but they were oppoſed by the ſecular barons; the ſecond was at the time of the famous diſpute concerning the ſucceſſion to the crown of Scotland in the reign of Edward I. for a queſtion ariſing about what kind of law the controverſy ſhould be decided; and it being eſpecially debated, whether the Cæſarean law, as a ſort of *jus gentium*, ought not in ſuch a caſe to have the preference to the law of England, it was determined that the authority of the Cæſarean law ſhould by no means be admitted. From the reign of Stephen to that of Edward III. that is, for the ſpace of 200 years, the Roman law was in great credit. The imperial law was a *jus gentium* till the liberties and grants which the king made to the barons made ſome alterations neceſſary, and new laws to be enacted. Theſe new regulations are what afterwards came to be called the law of England proper. However, the Roman or primitive

primitive feudal law through the intereſt and weight of the clergy, who were zealous ſupporters of it, kept its footing in our civil courts of judicature, except at ſome particular junctures, when the rebellious barons got the better of the king. Then the imperial laws were held in diſcredit; and what they called the common law, or *lex terræ*, that is, grants and incroachments upon the crown, which they ſtiled laws, came into vogue. The imperial law to this day obtains altogether in the courts of the admiralty, in courts martial, and in the univerſities. Edward I. took much pains to make his ſubjects acquainted with it; and to that end he engaged the younger Accurſius, the moſt renowned doctor of the age, to come over into England, and ſet up a ſchool of it at Oxford.

END of VOL. I.

PROPERTY OF THE SOCIETY

[redacted]

[redacted]